

# EXHIBIT

“A”

DECLARATION OF COVENANTS, CONDITIONS  
EASEMENTS AND RESTRICTIONS  
OF  
TRAILHEAD VILLAGE

THIS DECLARATION (the "Declaration") is made this \_\_\_ day of \_\_\_\_\_, 2005, by and between TRAILHEAD PROPERTIES LLC, an Ohio limited liability company (hereinafter referred to as "Developer") and TRAILHEAD HOMEOWNERS' ASSOCIATION, INC., an Ohio non-profit corporation (hereinafter sometimes referred to as the "Association"), both having the address of 3785 S. Green Rd., Beachwood, Ohio 44122.

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Article II, Section 1 of this Declaration and desires to create thereon one or more residential communities with open spaces and other common areas, and to this end, desires to subject said real property to the covenants, restrictions, easements, charges and liens, hereinafter set forth, for the benefit of said property and each owner thereof, the Developer, its successors and assigns, and the City of Berea (the "City") as hereinafter set forth; and

WHEREAS, it is understood and anticipated that the Developer may assign a portion, or all, of its obligations hereunder to a nominee; and

WHEREAS, it is further understood and anticipated that there may be Subsequent Amendments made to this Declaration; and

WHEREAS, Developer has deemed it desirable for the efficient preservation of the values and amenities in Trailhead Village at Rocky River Reservation in Berea, Ohio (the "Community"), to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collection and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Association has been incorporated under the laws of the State of Ohio, as a non-profit corporation, for the purpose of exercising the functions aforesaid; and

WHEREAS, the Association joins in the Declaration for the purpose of accepting the duties and responsibilities imposed upon it herein;

NOW, THEREFORE, Developer declares that the real property described in Article II, Section 1 (the "Property") shall be held, transferred, sold, conveyed and occupied subject to the covenants, easements, and restrictions of record and hereinafter set forth, and further specifies that the covenants, easements, and restrictions imposed, granted and/or reserved in this Declaration shall constitute covenants, easements, and restrictions running with the land and shall be binding upon Developer, its successors and assigns, and all other owners of any part of said real property,

including, but not limited to, the Association and Owners, together with their grantees, successors, heirs, executors, administrators or assigns.

ARTICLE 1  
DEFINITIONS

Section 1. The following words when used in this Declaration shall have the following meanings (unless the context shall prohibit):

- (a) "Association" shall mean and refer to TRAILHEAD HOMEOWNERS' ASSOCIATION, INC.
- (b) "Common Areas" shall mean and refer to the real property in the Community devoted to the common use and enjoyment of the Owners, consisting of all of the land designated in Exhibit "A" attached hereto, including, without limitation, private roads, drives, paths and walks not within the bounds of a Parcel and the entrances, exits and any other installations related thereto; the ponds or other bodies of water other; and any landscaped or open areas not located within a Parcel. The Common Areas shall be conveyed by the Developer to the Association as defined herein.
- (c) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, Easements and Restrictions of Trailhead Village and any supplements or amendments thereto.
- (d) "Developer" shall mean and refer to TRAILHEAD PROPERTIES LLC, an Ohio limited liability company, its successors and assigns.
- (e) "Living Unit" shall mean and refer to all units of residential housing constructed or to be constructed upon the Property, whether they are single-family residences, attached dwelling units, or any other type of living unit permitted to be constructed or created upon the Property under any applicable zoning code that now exists or may hereafter be amended.
- (f) "Member" shall mean and refer to all who are members of the Association as provided in Article III, Section I hereunder.
- (g) "Occupant" shall mean an Owner, lessee, land contract vendee and their family members or any other person or persons occupying a Living Unit in the Community as their residence.
- (h) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Parcel and/or Living Unit situated upon the Property but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (i) "Parcel" shall mean and refer to any lot on the recorded plat of the Community upon which a Living Unit is constructed or is intended to be constructed.
- (j) "Rules" shall mean and refer to the rules, regulations, policies and procedures governing the use, occupancy, operation, maintenance and physical appearances of the

Property, including Parcels and Living Units, as adopted from time to time by the Association.

ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION

Section 1 - The Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Berea, County of Cuyahoga, State of Ohio, and is more particularly described on Exhibit "B", attached hereto and made a part hereof.

Section 2 - Mergers. Upon any merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association. Alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligation of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration with the Property except as hereinafter provided.

Section 3 - Additional Land. Developer, its successors and assigns, hereby reserves the right, but not the obligation, from time to time to add additional property (the "Additional Land") to the Property and to subject the same to the provisions of this Declaration by amendment hereto duly executed and recorded with the Recorder of Cuyahoga County without any action by the Association or its members.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1 - Membership. Every Owner shall be a member of the Association. The membership of the Association shall be divided into two classes, Class A and Class B, entitled to the rights hereinafter set forth with respect to such classifications. Class A members shall be all those Owners as defined in Article I with the exception of Developer. The only Class B member shall be the Developer.

Section 2 - Voting Rights.

(a) Class A members shall be entitled to one vote for each Living Unit or Parcel in which they hold the fee simple interest or interests. When more than one person holds such interest or interests in any Living Unit or Parcel, all such persons shall be members, and the vote for such Living Unit or Parcel shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Living Unit or Parcel.

(b) The Class B member shall be entitled to three (3) votes for each Living Unit or Parcel owned by Developer in the Property, provided that the Class B membership shall



(b) Snow and ice shall be removed from (i) all private roads, (ii) the private driveway of each Parcel and (iii) visitor parking areas to keep the same reasonably free from such snow and ice as the circumstances may reasonably permit.

(c) Private roads and visitor parking areas shall be repaired and, if necessary, replaced, to keep them in good condition and repair.

(d) Utility facilities within the Community to the point where they intersect with a Parcel, including lighting installations, and water, sewer, gas, telephone and communication, electric and cable television lines and appurtenances which are not maintained by a utility company or otherwise owned by a public or quasi-public entity shall be repaired and replaced, if necessary, to keep the same in good working order and repair.

(e) All Common Areas, including open areas, all walks and paths shall be maintained by the Association.

Section 2 - Owner's Maintenance Responsibility. Unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, each Owner shall maintain his or her Parcel, the interior and exterior of all Living Units and all other structures within his or her Parcel in good condition and repair consistent with the Association standards and all applicable covenants of this Declaration. In addition, each Owner shall keep Owner's Parcel and the adjacent Common Areas free from debris, rubbish, rubble and other conditions created by such Owners or Occupants or their guests.

**If a repair or replacement required of an Owner is not promptly commenced or is not diligently and continuously completed by Owner upon demand for such work by the Association, the Association shall have the right (but not the obligation) to commence or complete the repair or replacement and shall charge the Owner for the cost thereof (together with a reasonable charge for the Association's overhead or administrative costs). If said charge is not paid by the Owner, the Association shall levy a special assessment against the Owner.**

## ARTICLE VI COVENANT FOR MAINTENANCE ASSESSMENT

Section 1 - Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Living Unit or Parcel, with the exception of the Developer, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or their conveyance, shall be deemed to covenant and agree to pay the Association: (1) monthly assessments or charges; (2) special assessments for capital improvements or necessary repair or replacement work, such assessments to be fixed, established and collected on a monthly basis. The monthly and special assessments, together thereon and costs of collection thereof as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2 - Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Members and in particular, for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, materials, equipment, utilities, management and supervision thereof.

Section 3 - Basis of Assessments. The annual budget for the initial year shall be first determined by Developer in good faith in consultation with the management company. The annual assessment for the initial year shall be \$135.00/month or \$1,620.00/yr. per Living Unit or Parcel. The Board of Directors of the Association or the Developer, after consideration of costs and future needs of the Association, may fix the assessment for any year thereafter at a greater or lesser amount. The assessment period shall be based on a calendar year. A prorated annual assessment shall be collected from the Owner through escrow upon closing on the purchase of the Parcel. Each subsequent annual assessment shall be due and payable the following calendar year on a monthly basis on dates fixed by the Board of Directors of the Association.

Section 4 – Reserves of the Association. Upon the conveyance of record title to an Owner from Developer, the Owner shall make a payment of Two Hundred Dollars (\$200.00) as a contribution to the working capital and reserves of the Association (“Reserve Payment”). The Association shall maintain all Reserve Payments in segregated accounts to meet unforeseen expenditures or to acquire additional equipment or services for the benefit of the Members. Such payment to this fund shall not be considered advance payments of annual assessments. Developer may not use any Reserve Payments to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits. This looks good to me.

Section 5 - Special Assessment. In addition to the annual assessments authorized by Section 1 hereof, the Developer or the Association may levy in any year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any improvement or unexpected repair or replacement, provided that any such special assessment levied by the Association shall have the assent of two-thirds (2/3) of the Board of Directors of the Association and be approved pursuant to the Code.

The assessments set out above are enforceable under Article VI, Section 7 of this Declaration.

Section 6 - Date of Commencement of Assessments. The annual assessments provided for herein shall commence on the date of the transfer of title from Developer to Owner of the first Parcel. The assessments for any year shall become due and payable on a monthly basis on dates fixed by the Board of Directors of the Association. The due date of any special assessments under Section 5 hereof shall be fixed in the resolution authorizing such assessments.

Section 7 – Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of the assessment against each Parcel for each assessment period at least thirty (30) days in advance of such period and shall, at that time, prepare a roster of the Property and

assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid.

Section 8 – Effect of Non-Payment of Assessment; Personal Obligation of the Owner; the Lien, Remedies of the Association. If any assessment is not paid on the date when due, then such assessment shall become delinquent, together with such interest thereon and cost of collection thereof as hereinafter provided.

If an installment of an annual or special assessment, is not paid within thirty (30) days after the due date, the Association may charge an administrative late fee as set forth in the Rules such delinquent assessment or installment shall bear interest from the due date at the rate of one and one-half percent (1 1/2%) per month provided that such rate does not exceed the highest rate permitted by law in which event the rate charged shall be the highest rate permitted by law. The Association may after such thirty (30) day period bring an action at law against the Owner responsible for the payment of such assessment, and (additionally or alternatively) may foreclose the lien against the property, and in the event a judgment is obtained, such judgment shall include interest on the assessment or installment amount as above provided, together with the costs of the action and reasonable attorney's fees in an amount to be determined by the court.

The personal obligation of the then Owner to pay such assessments shall remain his personal obligation and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

The Association may file in the office of the County Recorder a Notice of Lien to evidence any delinquent assessment or installment, but the Association shall not be under any duty to file such Notice of Lien and its failure or omission to do so shall not in any way impair or affect the Association's lien and other rights in and against the property and against the Owner of such property.

Section. 9 - Exempt Property. The following property subject to this Declaration shall be exempted from the charges, assessments and liens created herein: (a) all Common Areas; (b) all land exempted from taxation by the laws of the State of Ohio upon the terms and to the extent of such legal exemption; and (c) Parcels, land and Living Units owned by Developer prior to the complete build-out of the Community.

ARTICLE VII  
ADDITIONAL COVENANTS AND RESTRICTIONS



The intent of this Declaration is to cause the Community to be kept and maintained as a high quality development. Therefore, the covenants and restrictions provided in this Article shall be applicable to the Owner and Occupants of a Living Unit or Parcel. The following Covenants and Restrictions shall be broadly construed and interpreted in furtherance of this intent.

The Association shall have the power to adopt, amend, repeal and enforce Rules restricting and regulating (i) the use and enjoyment of the Common Areas, (ii) the appearance of the Parcels and Living Units and (iii) the actions of the Owners and Occupants of any portion thereof that affect the appearance, use or enjoyment of the Property. Such Rules may supplement, but may not be inconsistent with, the provisions of the Declaration. The Property shall be occupied and used in compliance with the Rules. Copies of the Rules shall be furnished by the Association to each Owner.

Section 1 – Architectural Control. No building, fence, wall or other structure, including, without limitation, any structure used for the receipt or transmission of radio or television signals except a television antennae of the type customarily used in residential areas in the immediate vicinity, shall be commenced, erected or maintained upon any Parcel or Living Unit except by the Developer, without first obtaining the approval of the Board of Directors in accordance with the procedure mandated by the Rules. Nor shall any exterior addition to or change or alteration upon any Parcel or Living Unit be made until the necessary approval is obtained from the Board of Directors pursuant to the Rules. In the event the Board of Directors or its designated committee fails to approve or disapprove such addition, alteration or change within thirty (30) days after Owner submits a written request pursuant to the Rules, such failure shall not constitute approval.

Section 2 - Trailers. No temporary buildings, trailer, recreation vehicle, garage, tent, shack, barn or any similar structure shall be used, temporarily or permanently, as a residence on any part of the Property at any time. Nor shall any temporary building, trailer, recreation vehicle, tent, shack, or barn be stored on the Property for more than seven (7) days, unless stored out-of-sight within the confines of a residence or garage.

Section 3 - Nuisance. No noxious or any activity constituting an unreasonable source of discomfort or annoyance shall be carried on upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance to other Owners. The Association shall have absolute power to determine what is "reasonable" and what is "unreasonable" under this Section.

Section 4 – Animals. No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any portion of the Property without the approval of the Association, except that no more than a cumulative total of two (2) dogs, cats, birds or other customary household pets approved by the Association may be kept, subject to the Rules adopted by the Association, provided that they are not kept, bred or maintained for any commercial purpose and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or annoyance shall be permanently removed from the Property upon three (3) days' written notice from the Association. Notwithstanding the foregoing, any dog identifiable, as a whole or in part, of a breed commonly known as "Pit Bull" or "Rottweiler" shall not be permitted on any portion of the Property. The Rules may limit the number of pets which may be kept in any one Living

Unit. The Association shall have absolute power to prohibit a pet from being kept on the Property or within a Living Unit if the Association finds a violation of this Section.

Section 5- Signs. Except as permitted by the Rules, no sign or other advertising device of any nature shall be placed upon any portion of the Property except for signs and advertising devices. Notwithstanding the foregoing, the restrictions of this Section 4 shall not apply to Developer.

Section 6 – Storage of Material and Trash Handling. No lumber, metals, bulk material, refuse, or trash shall be burned, whether in indoor incinerators or otherwise (excluding the burning of firewood in a fireplace), kept, stored or allowed to accumulate on any portion of the Property, except normal residential accumulation pending pick-up and except building materials during the course of construction or reconstruction of any approved building or structure, except firewood may be stored within a Living Unit, on patio areas or other areas designated by the Association. If trash or other refuse is to be disposed of by being picked up and carried away on a regular recurring basis, containers may be placed in the open on any day that a pick-up is to be made, thereby providing access to persons making such pick-up. No dumping or rubbish shall be permitted on any portion of the Property. Anything herein to the contrary notwithstanding, the Association may adopt a rule or rules which limit or permit the burning, incineration or storage of firewood, refuse or trash.

Section 7- Commercial or Professional Uses. Except as expressly permitted in this Declaration, or by the Rules, no industry, business, trade or full-time occupation or profession of any kind, commercial, educational, or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Property; provided, however, an Owner and/or Occupant may use a portion of his or her Living Unit for his office or studio, so long as the activities herein shall not interfere with the quiet enjoyment or comfort of any other Owner and/or Occupant and that such use does not result in the Living Unit becoming principally an office, school or studio as distinct from a Living Unit. Furthermore, no trade or business may be conducted in or from any Living Unit without the written approval of the Association first obtained. Such approval shall be granted so long as: (a) the existence or operation of the business activity is not apparent or detectable by sign, sound or smell from outside the Living Unit; (b) the business activity conforms to all City zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in a Living Unit except by appointment only; (d) the business activity does not involve door-to-door solicitation of Occupants of the Property; and (e) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Association. The Association may adopt Rules which intensify, relax or amend the prohibitions of this Article. Nothing in this Section shall preclude the leasing of the Living Unit by the Developer or an Owner, the right of the Developer or the Association (or firm or agent employed by the Developer or Association) to approve commercial activities such as charity events, temporary food and beverage operations, the right of the Developer to maintain brokerage offices for sales of Parcels and resales thereof and the right of Developer to utilize a Living Unit for office purposes.

Section 8 – Storage of Vehicles and Machinery No truck (including a two-axle truck with four tires), camper, camper trailer, recreation vehicle, boat trailer, all terrain vehicle, airplane, snowmobile, commercial vehicle, van, mobile home, tractor, bus, farm equipment, off-road vehicles or other vehicle of any kind, licensed or unlicensed, shall be stored on any driveway or other area in or upon the Property, for more than seven (7) days, except in the confines of garages, or parking areas approved by the Association. No machinery of any kind shall be placed or operated upon any portion of the Property except such machinery which is customarily required for the maintenance of the Property, related improvements, lawns and landscaping.

Section 9- Control of Trucks, Commercial Vehicles. No tractor trailer, commercial tractors, commercial vehicles, road machinery or excavating equipment shall be permitted to remain on any portion of the Property or on the public right-of-way adjoining any portion of the Property for any period of time whatsoever, except while making deliveries or performing services thereon and except as necessary for the construction, reconstruction or repair of buildings or structures on the Property.

Section 10 - Traffic Regulations. All vehicular traffic shall be subject to the provisions of the laws of the State of Ohio, County of Cuyahoga, and the City of Berea concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable Rules governing vehicular and pedestrian traffic on any private roads, including reasonable safety measures and speed limits. The Association shall be entitled to enforce the same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of the laws of the State of Ohio, County of Cuyahoga or the City of Berea, and such Rules promulgated by the Association, the more restrictive Rules shall govern. Only drivers licensed to operate motor vehicles by the State of Ohio or by any other state in the United States may operate any type of motor vehicle within the Property. All vehicles of any kind and nature which are operated on any private road shall be operated in a careful, prudent, safe, and quiet manner.

Section 11 – Poles, Wires, Antennae and Satellite Dishes. Subject to applicable easement rights, no facilities, including poles, wires, antennae and satellite dishes (over twelve inches (12") in diameter) for the transmission of electricity, telephone messages, radio messages and the like shall be placed or maintained on or above the surface of the ground in any portion of the Property without the prior approval of the Association and unless such facilities are in compliance with the City of Berea Zoning Resolutions. This provision shall not apply for temporary facilities for the construction or repair of any building or other structure.

Section 12 - Water Bodies. Access to all ponds, streams, rivers, water courses and wetlands, shall be for aesthetic purposes only, and no other use thereof, including without limitation, irrigation, swimming, boating, fishing, wading, ice skating, playing or use of flotation devices, shall be permitted. Those persons engaging in activities upon, in, around or above the ponds, streams, rivers, wetlands and water bodies of the Property, expressly assume the risk of the inherent dangers of said activities and agree that the Developer and the Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of said ponds, streams, rivers, wetlands and water bodies.

Section 13 – Grading. No Person shall change the grade on any portion of the Property unless such grade change is in compliance with the City of Berea Zoning Resolutions and unless the consent of the Association is first obtained.

Section 14 - Drainage. No Person shall interfere with the free flow of water through any drainage ditches or storm sewers within the Property. The City or other governmental authority having jurisdiction shall have the right to enter upon the Common Areas of the Property to repair and maintain all storm, drainage, courses, ditches, structures and appurtenances for the purpose of relieving any flooding condition or threatened flooding condition which might be harmful to other property within the City.

Section 15 – Fences. Except as installed by Developer as part of the initial design of the Community, no fence or other device shall be installed for the purpose of separating Parcels shall be maintained on any Parcel, without the prior written approval of the Developer or Board of Directors. Any approved fence must comply with all applicable City permits. No clothes line or clothes pole or other device or mechanism for the hanging of clothes shall be maintained on any Parcel.

Section 16 – Exterior Maintenance. The Owner of each Living Unit shall provide reasonable exterior maintenance of each such Living Unit as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, drains, catch basins, sewers, traps, driveways, walks and all other exterior improvements. All necessary maintenance of the Living Unit or other permitted structures shall be done in a manner, to conform to the original architectural design. Each Owner of a Parcel shall, at his sole costs and expense, repair his Living Unit, keep the same in condition comparable to the condition of such Living Unit at the time of its initial construction, excepting only normal wear and tear.

Section 17 – Designated Wetlands and Riparian Corridor Requirements. The wetlands and riparian setback restrictions as delineated in Exhibit "A" are intended to preserve from disturbance, removal or destruction of, any vegetation, watercourse or wetland located therein and to thereby preserve and protect the natural environment as a whole. Within the wetlands and riparian setbacks delineated in Exhibit "A", each Owner shall prevent the disturbance, removal or destruction of any vegetation, and the removal, destruction or filling in of any watercourse or wetland.

Section 18 - Damage to Roads. No Owner shall damage any roads within the subdivision or permit any contractor, builder or materialman to damage said roads during the period of any home improvement or maintenance, or said Owner shall be personally liable for any cost of repairing such roads, including any damage to the curbs, and shall hold the Developer, its successors and assigns harmless from any liability to any governmental entity for the cost of repairing such street, curbs, etc. In the event that Owner or Owner's contractor, builder or materialman damage the street or curb area, and such damage is repaired by the Developer, Owner shall promptly reimburse Developer upon receipt of an invoice for the reasonable cost of the same.

Section 19 – Damage or Destruction of Living Unit. If all or any portion of a Living Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner

thereof, with all due diligence and dispatch, to rebuild, repair or reconstruct such Living Unit in a manner that will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within three (3) months after the occurrence of the casualty and shall be completed within twelve (12) months after the occurrence of the casualty, unless prevented by causes beyond the control of the Owner.

Section 20 - Use of the Name "Trailhead Village". No Person shall use the name "Trailhead Village" or any derivative thereof in any printed or promotional material without the prior written consent of Developer. However, Owners may use the name "Trailhead Village" in printed and promotional material where such words are used solely to specify that particular property is located within Trailhead Village.

Section 21 – Sale, Leasing or Other Alienation of Living Unit.

(a) Owner's Right of Transfer. The Association shall have no right of first refusal with respect to the purchase or lease of a Parcel, and an Owner shall be able to transfer his Parcel freely by sale, gift, devise, lease or otherwise without restriction except as provided in subsection (b) below.

(b) Right to Lease Living Unit. It is the intent of Developer to create an Owner occupied Community. Nevertheless, an Owner shall have the right to lease all (but not less than all) of his Living Unit upon such terms and conditions as specified in the Rules, except that no Living Unit shall be leased or sub-leased for transient or hotel purposes and no lease shall extend beyond twelve (12) consecutive months. Any lease or sublease of a Living Unit for a period of less than four months shall be deemed to be a lease or sublease for transient or hotel purposes. Any lease or sublease of a Living Unit shall be in writing and shall provide: (1) that the lease or sublease shall be subject to the terms of this Declaration, the Code and Rules and that failure of a lessee to comply with the terms of this Declaration, the Code and Rules shall be a default under the lease or sublease; (2) that the Association shall have the right to require the Owner to deposit with the Association such amount as the Association shall consider appropriate as security to provide funds for repairs and to assure compliance with this Declaration, the Code and Rules. The limitations with respect to the leasing of a Living Unit shall not apply to the Developer or a first mortgagee of a Living Unit. No lease shall relieve the Owner from its obligation to comply with this Declaration, the Code and Rules. Each Owner shall provide copies of this Declaration, the Code and Rules as adopted by the Board of Directors to any lessee.

(c) Names of Owners and Occupants of Living Unit and Parcels. To enable the Association to maintain accurate records of the names, addresses and phone numbers of Owners and other Occupants of a Living Unit or Parcel, each Owner shall notify the Association in writing of the same, within five (5) days after such Owner's Parcel Living Unit has been transferred or leased to another person.

Section 22 - Waiver of Subrogation. Each Person as a condition of accepting title and/or possession of a Living Unit and the Association agree for themselves, and their respective successors, heirs, executors, administrators, personal representatives, assigns, and lessees, provided said agreement does not invalidate or prejudice any policy of insurance, that in the event that any building, structure or improvement within the Property or the fixtures or personal property of anyone located therein or thereon are damaged or destroyed by fire or other casualty that is

covered by insurance, the rights, if any, of any of them against the other, or against the employees, agents, licensees or invitees of any of them with respect to such damage or destruction and with respect to any loss resulting therefrom are hereby waived.

Section 23 – Violation of this Article. If any Person required to comply with the foregoing Covenants and Restrictions is in violation of any one of the same, including, but not by way of limitation, design review criteria or standards established by the Association or the Developer (as long as the Developer is a Class "B" Member of the Association), the Association shall have the right to give written notice to such Person to terminate, remove or extinguish such violation. Such notice shall expressly set forth the facts constituting such violation.

Except in the case of an emergency situation, the violating party shall have fifteen (15) days after written notice of the violation to take reasonable action to cause the removal, alleviation or termination of same. In the case of an emergency situation, or in the case of the failure of the violating party to comply with the provisions hereof after notice, the Developer and/or the Association shall have the right, through their respective agents and employees, to enter upon the land where the violation exists and to summarily terminate, remove or extinguish the violation. In addition to the foregoing, the Developer and/or the Association shall have the right but not the obligation to obtain an injunction from any court having jurisdiction for the cessation of such violation or attempted violation of this Article. The rights and remedies of the Association and the Developer contained in this Article shall be nonexclusive and in addition to any other right or remedy available at law or in equity, including a claim or action for specific performance and/or money damages (including punitive damages), and attorneys' fees and costs. Furthermore, the failure or neglect to enforce any term, covenant, condition, restriction, right or procedure herein shall in no event and under no circumstances be construed, deemed or held to be a waiver with respect to any subsequent breach or violation thereof. Subject to the provisions of the Declarations and the Code, a Person in violation of this Article shall be obligated to the Association and/or Developer for money damages and for the full amount of all costs and expenses, including attorneys' fees and costs, incurred to remedy such violation. If said amounts are not paid within ten (10) calendar days following said notification, then said amount shall be deemed "delinquent", and shall, as provided in this Declaration, become a continuing lien upon the portion of the Property owned or occupied by such Person(s) and a personal obligation of the Person(s) violating this Article. In addition, the Owner of any portion of the Property shall be liable jointly and severally for any obligations of any Occupant of such Owner's property.

Section 24 - Restrictions of Other Documents. Nothing contained in this Article shall preclude the imposition of more stringent restrictions imposed elsewhere in this Declaration, restrictions imposed in deeds conveying the Property or portions thereof and restrictions imposed by the Association so long as such restrictions are not inconsistent with restrictions imposed by this Declaration, or adopted by the Board. The City is a third party beneficiary of these covenants and restrictions; provided, however, if the City's zoning, building or other requirements of ordinances and general law are more restrictive than these covenants and restrictions, the City's requirements shall prevail.

Section 25 – Certificate of Compliance with Restrictions. Upon the conveyance of a Parcel or an interest therein, the grantor shall have the right to request the Association to issue a Certificate of Compliance stating that it has no record of a violation of this Article. A Certificate of Compliance may be relied upon by all persons for all purposes. Neither the Association, nor any

trustee, officer or agent shall have any liability to the grantor, grantee or mortgagee of a Parcel or to others if the Certificate of Compliance issued hereunder is not correct. The Association may require the advance payment of a processing fee not to exceed Fifty Dollars (\$50.00) for the issuance of the Certificate of Compliance.

## ARTICLE VIII EASEMENTS

Section 1 – Parking Easements. There is hereby reserved an easement upon portions of the Property, as determined by Developer and/or the Association, in favor of the Developer, the Association, all Owners, Occupants, and their respective guests, licensees and invitees for the construction, alteration, rebuilding, restoration, maintenance, repair and use of designated parking areas within the Community as set forth on Exhibit A. Notwithstanding anything set forth above to the contrary, parking in such designated parking areas is solely for the guests, licensees and invitees of the Owners and Occupants, emergency and service personnel, and such needs of Owners and Occupants as approved by the Association.

Section 2 - Landscaping Easement. There is hereby reserved in favor of Developer and granted to the Association, its successors and assigns, an easement upon, over, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of all landscaping installed or determined to be installed by Developer and/or the Association.

Section 3 – Utility Easements. There is hereby reserved in favor of Developer and granted to the Association, its successors and assigns, an easement upon, over, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of all utilities and service lines and systems including, but not limited to, water, sewer, drainage, gas, telephone, electricity, television, cable and communication lines and systems as shown on the final plat of the Community, recorded with the Cuyahoga County Recorder and attached hereto as Exhibit A. By virtue of this easement, it shall be expressly permissible for Developer and the Association and their successors and assigns, the City, the County or the providing utility or service company, to install and maintain facilities and equipment on the Property provided that such facilities shall not materially impair or interfere with any Living Unit and provided further that any areas disturbed by such installation and maintenance are restored to substantially the condition in which they were found. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or located in the Community except as approved by the Developer, the Association or unless the same are shown on a recorded plat.

Section 4 – Easement for Ingress and Egress. There is hereby reserved an easement upon, across, over and through the private streets and any sidewalks, walkways, and parking areas in favor of the Developer, the Association, all Owners, Occupants, and their respective guests, licenses and invitees, emergency and service personnel for pedestrian and vehicular ingress and egress, as the case may be, to and from all of the various portions of the Property. Notwithstanding the foregoing, the Developer and/or the Association may limit this right of ingress and egress by a Subsequent Amendment.

Section 5 – Easements for Construction, Alteration, etc. There is hereby reserved in favor of Developer and the Association an easement upon portions of the Property necessary in

connection with the construction, alteration, rebuilding, restoration, maintenance and repair of any Living Unit or other structures and improvements within the Property or serving the Property; provided, however, that in the exercise of any rights under this easement, there shall be no unreasonable interference with the use of any Living Unit or other structure or improvement on the Property.

Section 6 - Maintenance Easement. There is hereby reserved to Developer and for the benefit of the Association and its agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Property for the purpose of mowing, removing, caring, cutting or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash and debris in order to maintain reasonable standards of health, fire safety, and appearance within the Property, provided that such easements shall not impose any duty or obligation upon Developer or the Association to perform any such action, unless otherwise provided herein; and provided, further, that the exercise of its rights hereunder the Association shall be entitled to be reimbursed by such Owner pursuant to the provisions of this Declaration. Furthermore, the Association is granted easement rights to enter upon the Property, specifically including the Parcels, for the purpose of maintaining the driveways and landscaping of each Parcel and the Common Areas as provided in this Declaration.

Section 7 – Scope of Easements and Dedication of Roadways and Utilities. To the extent the easement rights granted or reserved hereunder are definable within specific areas, the Developer or the Association (with the Developer's prior written consent so long as Developer is a Class "B" Member) shall have the right (but not the obligation) to: (a) limit such easements to specific areas and purposes, and record a document or documents releasing the balance of the lands from the burden of such easements; and/or (b) record a plat or other document or documents setting forth the specific areas subjected to such easements; and/or (c) dedicate to public or private use specific areas (and the improvements contained therein) within the Property to meet the requirements of the County, City and other public authorities having jurisdiction over the same. The Developer or the Association may exercise any of such rights without the necessity of obtaining the consent or approval of Owners and other Persons for whose benefit the easement rights are granted or served.

Section 8 – Easements to Run with Lands. All easements and rights described herein are easements appurtenant to the Property and the Common Areas, shall run with said lands, perpetually and at all times shall inure to the benefit of and be binding upon the Developer, its successors and assigns, and any Owner, Tenant, Occupant, purchaser, mortgagee, the City or other Person having an interest in the Property, or any part or portion thereof. Reference to the easements and rights described in any part of this Declaration, in any deed of conveyance, lease, mortgage, trust deed, declaration for another type of residential association, or other evidence of obligation, shall be sufficient to grant such easements and rights to the respective grantees, lessees, mortgagees or trustees of such property, or any portion thereof, and to reserve to the grantor or lessor their successors and assigns, as easements appurtenant to the remainder of such properties, easements created by this Declaration for the benefit of the Association, any Owner, Tenant, Occupant, purchaser, mortgagee, the City or other Person in respect to any portion of the Property as fully and completely as though such easements and rights were recited fully as set forth in their entirety in such document.



Developer and (after transfer of the Common Areas) the Association shall have the right to grant easements for the installation and maintenance of street and traffic signs, sanitary sewers, storm sewers, drainage and swales to the City, County or other governmental agency having jurisdiction. No Owner or Occupant shall in any way hinder or obstruct the operation or flow of the drainage system, sanitary sewers and other utilities. The easement areas and all improvements therein shall be maintained continuously by the Association unless those easement areas are accepted by the City, County or other agency by formal action.

Section 9 – Special Developer Right. There is hereby reserved in favor of the Developer easements for the connection, extension, installation, maintenance, inspection, repair and replacement of all utilities and service lines and systems, including, but not limited to, water, sewer, drainage, gas, telephone, electricity, television, cable and communication lines and systems for the benefit of real estate outside the Property, whether or not Additional Land. If damage is caused by the Developer in the exercise of the easement and rights granted by this Section, it shall promptly repair such damage to the condition existing prior thereto. The right reserved to Developer in this Section shall terminate on the 10<sup>th</sup> anniversary of the date of transfer by Developer of the last Living Unit or Parcel in the Community.

## ARTICLE IX

### LOCAL SERVICE DRAINAGE EASEMENTS WITH THE HOMEOWNERS' ASSOCIATION

Section 1 - Declaration of Easements and Rights. Developer hereby declares non-exclusive perpetual easements for storm drainage purposes within the Local Service Drainage Easement areas shown on the Subdivision Plat (Exhibit A), for the mutual benefit of the owners of the sublots upon which such easements are located, to utilize the storm drainage facilities within said easements. For purposes of this Declaration, these easements may be utilized by any owner of a subplot within the Subdivision for the purposes described herein. The owner of the subplot upon which the Local Service Drainage Easement is located is enjoined not to commit any act, nor to allow or suffer any person to commit any act, which impedes the purpose of the Easement.

Section 2 - Mutual Maintenance and Repair Responsibilities. The Association shall have equal rights and responsibilities to access, lay, maintain, repair, replace and remove pavements, storm sewer pipe, manholes, culverts, drains, ditches, swales, plantings, and/or appurtenances within such Local Service Drainage Easement areas, the ("Maintenance Work"). In addition, the Association shall have the rights and responsibilities for removing, clearing, cutting and pruning of underbrush, weeds, stumps, and other growth that impairs the flow of storm drainage through the Local Service Drainage Easement areas, and shall keep the same in a clean and sanitary condition (the "Additional Work").

Section 3 - Right of Non-Defaulting Owner/Owners. If the Association fails to perform the Maintenance Work and/or the Additional Work (the "Defaulting Owner"), the non-defaulting owner or owners shall have the right to perform the Maintenance Work and/or the Additional Work and charge the Defaulting Owner for maintenance costs, together with interest thereon and costs and expenses, including reasonable attorney's fees.

There shall be a corresponding right on the part of an Owner to file suit to enjoin the Association or other person with a possessory interest in a subplot in this Subdivision, upon which a Local Service Drainage Easement is located, to make repairs, maintenance, or improvement to



Section 3 - Enforcement. Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4 – Binding Effect. Each Grantee accepting a deed, lease or other instrument conveying any interest in a Living Unit, or Parcel, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, personal representatives, successors and assigns to observe, perform and be bound by this Declaration.

Section 5 – Assignability. The Developer, its successors and assigns, notwithstanding any other provision herein to the contrary, shall at all times have the right to fully transfer, convey and assign all or part of its rights, title and interest under this Declaration, provided that such transferee, grantee or assignee shall take such rights subject to all obligations also contained herein.

Section 6 - Amendments. The terms and conditions of this Declaration may be amended, annulled or waived by an instrument in writing recorded in the public records of Cuyahoga County, Ohio, in the following manner and subject to the following conditions:

(a) Until such time as the Developer, or Developer's designated successors or assigns has completed the sale of all Parcels, Developer, or Developer's designated successors or assigns, shall have the sole right and power of granting waivers to provisions of this Declaration and amending this Declaration provided no such amendment shall materially and adversely affect the value of existing Living Units or shall prevent a Living Unit from being used by the Owner in the same manner that it was being used prior to the adoption of such amendment.

(b) After the sale of all of the Parcels of the Property by the Developer to Owners, an amendment, annulment or waiver of any provision hereof shall have been approved at duly called and held meetings by not less than sixty-six and two-thirds (66-2/3) percent of the membership.

(c) In addition to the above, Developer and/or the Association shall have the right to amend this Declaration without the consent of any person solely to correct errors of omission or commission or as necessary to comply with requirements of any governmental agency or public, quasi-public or private entity, or to bring the Declaration in compliance with the applicable laws, statutes and ordinances.

Section 7 - Special Amendment. Either the Developer or the Association shall have the right and power to authorize and record a special amendment to this Declaration at any time and from time to time, which amends this Declaration to correct clerical or typographical errors in this Declaration. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Developer and to the Association to make a special amendment on behalf of each Owner, as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, other evidence of obligation, or other instrument affecting the Property and the acceptance



STATE OF OHIO            )  
                                  )     SS:  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Trailhead Properties LLC, by Richard Thomas, its Managing Member, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed, and the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, Ohio, this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF OHIO            )  
                                  )     SS:  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said State, personally appeared the above-named TRAILHEAD HOMEOWNERS' ASSOCIATION, INC. by \_\_\_\_\_, its President, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed, and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, Ohio, this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
NOTARY PUBLIC

**Exhibit B:**

To Declaration of Covenants, Conditions, Easements and Restrictions  
Of Trailhead Village – 2 pages

Situated in the City of Berea, County of Cuyahoga, State of Ohio and known as being part of Original Middleburg Township Lot Number 1, 2, 3 and 4, Section Number 23 and all of Parcel "B" in the Split Map for the Cole Estate of parts of Original Middleburg Township Lot Numbers 1, 2, 3 and 4, Section Number 23 as shown in the recorded plat in Volume 327 of Maps, Page 1 of Cuyahoga County Records and further bounded and described as follows: Beginning at a 5/8" iron pin found at an angle point in the centerline of Barrett Road, 60 feet wide, said point being measured along the centerline of Barrett Road, South 43°20'36" East, a distance of 390.00 feet from the most westerly corner of a parcel of land conveyed to Helen L. Eckert by deed recorded in Volume 6032, Page 692 of Cuyahoga County Records; thence North 37°29'24" East, a distance of 30.39 feet to the northeasterly line of Barrett Road, witness a 5/8" iron pin found 0.46 feet South, being the PRINCIPAL PLACE OF BEGINNING;

Course 1 thence North 37°29'24" East, a distance of 369.61 feet to a 5/8" iron pin set;

Course 2 thence North 63°43'56" West, a distance of 199.70 feet to a 5/8" iron pin set;

Course 3 thence North 26°16'04" East, a distance of 394.13 feet to the southerly line of Parcel No. 1 of lands conveyed to the Board of Park Commissioners of the Cleveland Metropolitan Park District by deed recorded in Volume 3559, Page 1 of Cuyahoga County Records, witness a 5/8" iron pin found 0.03 feet North and 0.06 feet East, said point being distant South 67°45'14" East, measured along said southerly line, a distance of 40.00 feet from a 1/2" iron pin in concrete found at an angle point therein;

Course 4 thence along the southerly line of lands so conveyed to the Board of Park Commissioners of the Cleveland Metropolitan Park District and the southerly line of Parcel No. 1 of lands conveyed to the Board of Park Commissioners of the Cleveland Metropolitan Park District by deed recorded in Volume 3398, Page 537 of Cuyahoga County Records, South 67°45'14" East, a distance of 154.00 feet to a 1/2" iron pin in concrete found at an angle point therein;

Course 5 thence continuing along the southerly line of lands conveyed to the Board of Park Commissioners of the Cleveland Metropolitan Park District, South 69°56'19" East, a distance of 135.90 feet to a 1/2" iron pin in concrete found at an angle point therein;

Course 6 thence continuing along the southerly line of lands conveyed to the Board of Park Commissioners of the Cleveland Metropolitan Park District, South 88°19'43" East, a distance of 243.53 feet to a 1/2" iron pin in concrete found at an angle point therein;

Course 7 thence continuing along the southerly line of lands conveyed to the Board of Park Commissioners of the Cleveland Metropolitan Park District, North  $87^{\circ}53'17''$  East, a distance of 261.61 feet to a  $\frac{1}{2}$ " iron pin in concrete found at an angle point therein;

Course 8 thence continuing along the southerly line of lands conveyed to the Board of Park Commissioners of the Cleveland Metropolitan Park District, South  $85^{\circ}24'51''$  East, a distance of 211.92 feet to a  $\frac{5}{8}$ " iron pin found at the northeasterly corner of land conveyed to Alex Buhaj and Mary Buhaj by deed recorded in Volume 7462, Page 5 of Cuyahoga County Records;

Course 9 thence along the northerly line of lands conveyed to Alex Buhaj and Mary Buhaj, South  $42^{\circ}36'04''$  West, a distance of 1215.14 feet to the northeasterly line of Barrett Road, witness a 1" iron pipe found 0.04 feet southwest;

Course 10 thence along the northeasterly line of Barrett Road, North  $21^{\circ}31'00''$  West, a distance of 46.33 feet to an angle point therein;

Course 11 thence continuing along the northeasterly line of Barrett Road, North  $51^{\circ}58'36''$  West, a distance of 77.92 feet, witness a  $\frac{5}{8}$ " iron pin found 0.07 feet northeast;

Course 12 thence North  $21^{\circ}39'33''$  East, a distance of 287.46 feet to a  $\frac{5}{8}$ " iron pin found;

Course 13 thence North  $2^{\circ}17'40''$  East, a distance of 80.00 feet to a  $\frac{5}{8}$ " iron pin found;

Course 14 thence North  $84^{\circ}18'11''$  West, a distance of 153.79 feet to a  $\frac{5}{8}$ " iron pin set;

Course 15 thence South  $21^{\circ}38'44''$  West, a distance of 280.00 feet to a  $\frac{5}{8}$ " iron pin set on the northeasterly line of Barrett Road;

Course 16 thence along the northeasterly line of Barrett Road, North  $61^{\circ}41'18''$  West, a distance of 180.24 feet to the principal place of beginning and containing 12.6841 acres (552,520 square feet) of land according to a survey by Matthew C. Neff, Ohio Professional Surveyor #7315 of the M Neff Design Group dated October 18, 2004, be the same more or less but subject to all legal highways.

NOTE: Bearings shown hereon are to an assumed meridian and are used to denote angles only. Monuments described as  $\frac{5}{8}$ " iron pins set are  $\frac{5}{8}$ " diameter by 30" long rebar with cap stamped 'M NEFF 7315'.

**EXHIBIT**  
**“B”**



Code of Regulations of Trailhead Homeowners' Association

An Ohio Not For Profit Corporation

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## CODE OF REGULATIONS OF TRAILHEAD HOMEOWNERS' ASSOCIATION

The within Code of Regulations ("Code") is referenced in the Declaration of Covenants, Conditions, Easements and Reservations of Trailhead Village ("Declaration"). Certain of the terms used in this Code have been defined in the Declaration and, when used herein, shall have the same meaning as set forth in the Declaration, unless the context clearly indicates a different meaning therefor. The Code is to provide for the establishment of a Homeowners' Association for the government of the Community in the manner provided by the Declaration and this Code. This purpose shall be accomplished on a non-profit basis, and no part of the earnings of the Association shall inure to the benefit of any private person, firm, corporation, association or organization. All present or future owners or tenants or their employees, or any other person who might use the facilities of the Community in any manner shall be subject to the covenants, provisions or regulations contained in the Declaration and this Code and shall be subject to any restriction, condition or regulation hereafter adopted by the Association. The mere acquisition or rental of any of the Living Units, located within the Community described in the Declaration, or the mere act of occupancy of any of the Living Units will constitute acceptance and ratification of the Declaration and of this Code.

### ARTICLE I THE ASSOCIATION

Section 1. Name and Nature of Association. The Association shall be an Ohio corporation not for profit and shall be called the Trailhead Homeowners' Association.

Section 2. Membership. Each Owner upon acquisition of title to a Living Unit, shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition by such member of Living Unit ownership, at which time the new owner of such Living Unit shall automatically become a member of the Association. Membership in the Association shall be limited to Owners. In addition to any other rights the Developer may have pursuant to the Declaration, the Developer shall be a member of the Association with respect to all Parcels owned by Developer and shall have the right, without limitation, to exercise the voting power appurtenant to such Parcel(s) and the power to vote the same.

Section 3. Voting Rights. On any question on which the vote of Owners is permitted or required, the owner or owners of each Living Unit or Parcel shall be entitled to exercise one (1) vote for each such Living Unit or Parcel. In the case of a Living Unit or Parcel owned or held in the name of a corporation or a partnership, a certificate signed by said Living Unit or Parcel Owner shall be filed with the Secretary of the Association. If such certificate is not on file, the vote of such corporation or partnership, shall not be considered nor shall the presence of such Living Unit or Parcel Owner at a meeting be considered in determining whether the quorum requirement for such meeting has been met. Fiduciaries and minors who are owners of record of a Living Unit may vote their respective interests as an Owner. If two or more persons, whether fiduciaries, tenants in common or otherwise, own undivided interests in a Living Unit, each may exercise that proportion of the voting power of all of the Owners of said

Living Unit that is equivalent to their respective proportionate interests in said Living Unit. When any fiduciary or other legal representative of an Owner has furnished to the Association proof, satisfactory to it, of his authority, he may vote as though he were the Owner. The Developer or its nominee shall be the voting member with respect to any Living Unit or Parcel owned by the Developer. The vote of the Association with respect to any Living Units or Parcels owned by the Association shall be determined by the Board.

Section 4. Majority. Except as otherwise provided in the Act, the Declaration or this Code, all actions taken by the Owners shall require the affirmative vote of a majority of the voting power of the Association present at a meeting at which a quorum is present.

Section 5. Proxies. Owners may vote or act in person or by proxy. The person appointed as proxy need not be a member of the Association. Designation by a member or members of a proxy to vote or act on his or their behalf shall be made in writing to the Secretary of the Association (or if there is no Secretary, then with the person conducting the meeting for which the proxy is given) at or before the meeting and shall be revocable at any time by actual notice to the Secretary of the Association by the member or members making such designation. Notice to the Association in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized. The presence at a meeting of the person appointing a proxy does not revoke the appointment.

Section 6. Establishment of Owners' Association and Meetings of Members.

(A) Establishment of Owners' Association.

The Owners' Association shall be established not later than the date the deed or other evidence of ownership is filed for record following the first sale of a Living Unit in the Community. Until the Owners' Association is established, the Developer shall act in all instances where action of the Owners' Association or its officers is authorized or required by law or in the Declaration.

(B) Annual Meeting.

The annual meeting of members of the Association for the election of members of the Board of Directors, the consideration of reports to be laid before such meeting, and the transaction of such other business as may properly be brought before such meeting shall be held at the office of the Association or at such other place in Cuyahoga County as may be designated by the Board and specified in the notice of such meeting. The first annual meeting of the Association shall be held upon ten (10) days' written notice given by the Developer not later than the time that one-third (1/3) of all Parcels and/or Living Units in the Community have been sold and conveyed by the Developer, unless the Developer shall consent, in its sole discretion, to a lesser fraction. Thereafter, the annual meeting of members of the Association shall be held on \_\_\_\_\_ in each succeeding year, if not a legal holiday, and, if a legal holiday, then on the next succeeding business day.

- (C) **Special Meeting.**  
Special meetings of the members of the Association may be held on any business day when called by the President of the Association or by the Board of Directors of the Association or by members entitled to exercise at least twenty-five percent (25%) of the voting power of the Association or by the Developer or any Owner when a meeting is required for the election of members to the Board of Directors pursuant to Article II, Section 5 hereof. Upon request in writing delivered either in person or by certified mail to the President or the Secretary of the Association by any persons entitled to call a meeting of members, such officer shall forthwith cause to be given to the members entitled thereto notice of a meeting to be held on a date not less than seven (7) or more than sixty (60) days after the receipt of such request as such officer may fix. If such notice is not given within thirty (30) days after the delivery or mailing of such requests, the persons calling the meeting may fix the time of the meeting and give notice thereof. Each special meeting shall be called to convene at \_\_\_\_\_ and shall be held at the office of the Association or at such other place in Cuyahoga County as shall be specified in the notice of meeting.
- (D) **Notices of Meetings.**  
Not less than seven (7) nor more than sixty (60) days before the day fixed for a meeting of the members of the Association, written notice stating the time, place and purpose of such meeting shall be given by or at the direction of the Secretary of the Association or any other person or persons required or permitted by this Code to give such notice. The notice shall be given by personal delivery or by mail to each member of the Association who is an owner of a Living Unit of record as of the day next preceding the day on which notice is given. If mailed, the notice shall be addressed to the members of the Association at their respective addresses as they appear on the records of the Association. Notice of the time, place and purposes of any meeting of members of the Association may be waived in writing, either before or after the holding of such meeting, by any members of the Association, which writing shall be filed with or entered upon the records of the meeting. The attendance of any member of the Association at any such meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice shall be deemed to be a waiver by him of notice of such meeting.
- (E) **Quorum.**  
**Adjournment.** Except as may be otherwise provided by law or by the Declaration, at any meeting of the members of the Association, the members of the Association entitled to exercise one-half (½) of the voting power of the Association present in person or by proxy shall constitute a quorum for such meeting; provided, however, that no action required by

law, by the Declaration, or by this Code to be authorized or taken by a designated percentage of the voting power of the Association may be authorized or taken by a lesser percentage; and provided further, that the members of the Association entitled to exercise a majority of the voting power represented at a meeting of members, whether or not a quorum is present, may adjourn such meeting from time to time; if any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting.

Section 7. Order of Business. The order of business at all meetings of Owners of the Association shall be as follows:

- (1) Calling of meeting to order.
- (2) Proof of notice of meeting or waiver of notice.
- (3) Reading of minutes of preceding meeting.
- (4) Reports of Officers.
- (5) Reports of Committees.
- (6) Election of Inspectors of election.
- (7) Election of members of the Board of Directors.
- (8) Unfinished and/or old business.
- (9) New Business.
- (10) Adjournment.

Section 8. Actions without a Meeting. All actions which may be taken at a meeting of the Association, except an action for the removal of a Board member, may be taken without a meeting with the approval of, and in a writing or writings signed by the members of the Association having the percentage of voting power required to take such action if the same were taken for a meeting. Such writing or writings shall be filed with the Secretary of the Association.

## ARTICLE II BOARD OF DIRECTORS.

Section 1. Qualifications. Except as otherwise provided herein, all Members of the Board of Directors (herein called "Board Members" or "Board") shall be Owners. Board Members elected or designated by the Developer need not fulfill the qualifications imposed by this Section 1 of this Article II or any other qualifications imposed on Board Members elected by Owners other than the Developer, except as otherwise provided in this Code, and Board Members elected or designated by the Developer may be removed only by the Developer or as otherwise provided herein. If a Board Member shall cease to meet such qualifications during his term, he shall thereupon cease to be a member of the Board and his place on the Board shall be deemed vacant. No single Living Unit may be represented on the Board by more than one (1) person at any time.

Section 2. Number of Board Members. Subject to such limitations as are or may be imposed by the Declaration or this Code (including Section 14 hereof), as any of the same may be lawfully amended from time to time, all power and authority of the Association shall be exercised by the Board of Directors consisting of three (3) members, in accordance with Section 3 hereof.

Section 3. Election of Board Members by Developer and Owners Prior to the First Annual Meeting. Until such time as one-third (1/3) of the Parcels have been sold and conveyed by the Developer, the Developer shall have the right to elect or designate all three (3) Board Members. Not later than the time that one-third (1/3) of the Parcels have been sold and conveyed by the Developer, the Association shall meet and the Owners, other than the Developer, shall elect one (1) Board Member who shall replace one (1) of the Board Members previously elected or designated by the Developer. The Developer shall have the sole right to designate the two (2) Board Members who will be replaced. Since one (1) of the three (3) Board Members representing one-third (1/3) of the Board Members is to be elected by Owners other than the Developer when one-third (1/3) of the Parcels in the Community have been sold or conveyed by the Developer, it will not be necessary to have a meeting when one-third (1/3) of the Parcels in the Community have been sold and conveyed by the Developer, since, at that time, Owners, other than the Developer, will have elected the required thirty-three and one-third percent (33-1/3%) of the members of the Board.

Section 4. First Annual Meeting. Within thirty (30) days after the earlier of either: (a) five (5) years following the date of the establishment of the Association (or such earlier period of time as Developer, at its option, may designate); or (b) the date of the sale and conveyance of Parcels or Living Units to which appertain one-third (1/3) of the Community or more Areas to purchasers in good faith for value, the Association shall meet (herein referred to as the "First Annual Meeting") and all Owners (including Developer, if Developer shall own any Parcels or Living Units) and elect all three (3) members of the Board of the Association and all persons previously elected or designated whether by the Developer or by the other Owners shall immediately resign; provided, however, that such persons shall be eligible for re-election to the Board. The persons so elected at the First Annual Meeting shall take office upon such election and shall serve such terms for which they are elected in accordance with Section 5 of this Article II.

Section 5. Election of Board Members from and after the First Annual Meeting. Except for the procedures set forth in Section 3 of this Article II for the election of Board Members prior to the First Annual Meeting, Board Members shall be elected at the annual meeting of members of the Association, but when the annual meeting is not held or Board Members are not elected thereat, they may be elected at a special meeting called and held for that purpose. Such election shall be by written secret ballot whenever requested by any member of the Association; but, unless such request is made, the election may be conducted in any manner approved at such meeting. Any Board Member elected or designated prior to the First Annual Meeting shall hold office for a term not to exceed one (1) year after his election or designation. Commencing with the First Annual Meeting, Board Members shall be elected for such terms so that the terms of office of not less than one-third (1/3) of the Board Members shall expire each year. Accordingly, at the First Annual Meeting of the Association, one (1) Board Member shall



be elected for a term of three (3) years, one (1) Board Member shall be elected for a term of two (2) years and one (1) Board Member shall be elected for a term of one (1) year. All Board Members shall be elected in accordance with the provisions of this Article II. At meetings of the Association subsequent to the First Annual Meeting which are called for the purpose of electing Board Members, each Board Member shall be elected for terms of three (3) years or to complete unfinished terms. Except as otherwise provided herein, each Board Member shall hold office until the expiration of his term and until his successor is elected, or until his earlier resignation, removal from office or death. Any Board Member may resign at any time by oral statement to that effect made at a meeting of the Board or by a writing to that effect delivered to the Secretary of the Association; such resignation shall take effect immediately or at such other time as the Board Member may specify. Each member of the Association may cast as many of his votes as there are Board Members to be elected. By way of example, if two (2) Board Members are to be elected, a member of the Association shall have the right to cast a maximum of two (2) votes, but not more than one (1) vote may be cast for any candidate. The candidates receiving the greatest number of votes shall be elected and those receiving the highest percentages of the total vote cast shall serve for the longest terms. Tie votes shall be decided by drawing of lots or by a flip of a coin.

Section 6. Organization Meeting. Immediately after each annual meeting of members of the Association, the newly elected Directors and those Directors whose terms hold over shall hold an organization meeting for the purpose of electing officers and transacting any other business. Notice of such meeting need not be given.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such times and places as shall be determined by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year.

Section 8. Special Meetings. Special meetings of the Board of Directors may be held at any time upon call by the President or any two Directors. Written notice of the time and place of each such meeting shall be given to each Director either by personal delivery or by mail, telegram or telephone at least two (2) days before the meeting, which notice need not specify the purposes of the meeting; provided, however, that attendance of any Director at any such meeting without protesting (prior to or at the commencement of the meeting) the lack of proper notice shall be deemed to be a waiver by him of notice of such meeting and such notice may be waived in writing either before or after the holding of such meeting, by any Director, which writing shall be filed with or entered upon the records of the meeting. Unless otherwise indicated in the notice thereof, any business may be transacted at any organization, regular or special meeting.

Section 9. Quorum; Adjournment. A quorum of the Board of Directors shall consist of a majority of the Directors then in office; provided that a majority of the Directors present at a meeting duly held, whether or not a quorum is present, may adjourn such meeting from time to time, if any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting. At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by a majority vote of those present, except as may be otherwise expressly provided in the Declaration or in this Code.

Section 10. Powers and Duties. Except as otherwise provided by law, the Declaration or this Code, all power and authority of the Association shall be exercised by the Board. In carrying out the purposes of the Community and subject to the limitations prescribed by law, the Declaration or this Code, the Board, for and on behalf of the Association, may do the following:

- (A) Maintenance, repair, replacement and surveillance of the Community and the Common Areas.
- (B) Levy of Assessments against the Owners and the collection of same.
- (C) Designation and dismissal of the personnel necessary for the maintenance and operation of the Community and the Common Areas.
- (D) In carrying out the purposes of the Association and subject to the limitations prescribed by law, the Declaration or this Code, the Board, for and on behalf of the Association, may:
  - (1) Purchase or otherwise acquire, lease as lessee, hold, use, lease as lessor, sell, exchange, transfer, and dispose of property of any description or any interest therein.
  - (2) Grant easements for access, utility and other purposes set forth in Article VIII of the Declaration for the benefit of the Community, Additional Property or any neighboring property, subject, however, to the Special Developer Right reserved in Section 9 thereof.
  - (3) Make contracts.
  - (4) Effect insurance.
  - (5) Borrow money, and issue, sell, and pledge notes, bonds, and other evidence of indebtedness or the Association, provided, however, if such borrowing is in excess of Five Thousand Dollars (\$5,000.00), the prior approval of the members of the Association entitled to exercise a majority of the voting power of the Association shall be obtained at a special meeting duly held for such purpose.
- (E) Employ a managing agent to perform such duties and services as the Board may authorize.
- (F) Employ lawyers and accountants to perform such legal and accounting services as the Board may authorize.
- (G) Adopt Rules.

- (H) To do all things permitted by law and exercise all power and authority within the purposes stated in this Code or the Declaration or incidental thereto.

Section 11. Removal of Board Members. Except as otherwise provided herein and in the Act, the Board may remove any Board Member and thereby create a vacancy in the Board if by order of court such Board Member has been found to be of unsound mind, or if he is physically incapacitated, adjudicated as bankrupt, or fails to attend three consecutive meetings of the Board. At any regular or special meeting of members of the Association duly called at which a quorum shall be present, any one or more of the Board Members may be removed with or without cause by the vote of members entitled to exercise a majority of the voting power of the Association, and a successor or successors to such Board Member so removed may be elected at the same meeting for the unexpired term for each such removed Board Member. Any Board Member whose removal has been proposed by the members of the Association shall be given an opportunity to be heard at such meeting.

Section 12. Vacancies. Except as otherwise provided and subject to the provisions of Act, vacancies in the Board may be filled by a majority vote of the remaining Board Members until an election to fill such vacancies is held. Members of the Association shall have the right to fill any vacancy in the Board (whether or not the same has been temporarily filled by the remaining Board Members) at any meeting of the members of the Association called for that purpose, and any Board Members elected at any such meeting of members of the Association shall serve until the next annual election of Board Members and until their respective successors are elected and qualified.

Section 13. Fidelity Bonds. The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate Fidelity Bonds. The premiums on such bonds shall be paid by the Association and shall be a common expense.

Section 14. Initial Board of Directors. Notwithstanding any of the other provisions contained in this Article II, the Developer may designate the initial Board of Directors to serve until the first meeting of the Owners. The initial Board of Directors may consist of not less than three (3) members and such members may be officers, directors, employees or other designated representatives of Developer, and need not be owners or occupiers of Living Units.

Section 15. Compensation. The Board of Directors shall not receive any salary or compensation for their services, as such, provided nothing herein contained shall be construed to preclude any Board Member from having dealings with the Association in any other capacity and receiving compensation therefor.

### ARTICLE III OFFICERS



Section 9. No Compensation to Officers. None of the officers of the Association shall receive compensation for his services as such.

#### ARTICLE IV GENERAL POWERS OF THE ASSOCIATION

Section 1. Payments from Maintenance Funds. The Association, for the benefit of the owners, shall acquire, and shall pay for out of the maintenance fund hereinafter provided all expenses arising with respect to, or in connection with, the Community ("Common Expenses"), including, without limitation, the following:

- (A) The expense of the Association's Maintenance responsibilities under Article V of the Declaration;
- (B) Casualty Insurance.  
A policy or policies of fire insurance, with extended coverage, vandalism and malicious mischief endorsements, as determined by the Board, the amount of which insurance shall be reviewed annually;
- (C) Liability Insurance. Directors' and Officers' Liability Insurance.  
A policy or policies insuring the Association; the members of the Board and the owners against any liability to the public or to the owners (of Living Units and of the Common Areas, and their invitees, or tenants), incident to the ownership and/or use of the Common Areas and Living Units, as determined by the Board, the limits of which policy shall be reviewed annually. Furthermore, the Board, at its option, may obtain directors' and officers' liability insurance;
- (D) Workmen's Compensation.  
Workmen's compensation insurance to the extent necessary to comply with any applicable laws;
- (E) Wages and Fees for Services.  
The services of any person or firm employed by the Association, including, without limitation, the services of a person or firm to act as a manager or managing agent for the Community, the services of any person or persons required for the maintenance of or operation of the Property, and legal and/or accounting services necessary or proper in the operation of the Community or the enforcement of the Declaration and this Code and for the organization, operation and enforcement of the rights of the Association;
- (F) Additional Expenses.  
Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the

Association is required to secure or pay for pursuant to the terms of the Declaration and this Code of which in its opinion shall be necessary or proper for the maintenance and operation of the Community as a first-class, fee simple cluster development or for the enforcement of the Declaration and this Code;

- (G) Discharge of Mechanic's Liens.  
Any amount necessary to discharge any mechanic's lien or other encumbrances levied against the entire Community or any part thereof which may in the opinion of the Association constitute a lien against the Property or against the Common Areas, rather than merely against the interests therein of particular owners; it being understood, however, that the foregoing authority shall not be in limitation of any statutory provisions relating to the same subject matter. Where one or more owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Association by reason of said lien or liens shall be specially assessed to said owners;
- (H) Certain Maintenance of Living Units. Maintenance and repair of any Living Unit if, at the sole discretion of the Association, the owner or owners of said Living Unit have failed or refused to perform said maintenance or repair; within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Association to said owner or owners, provided that the Association shall levy a special assessment against such Owner for the cost of said maintenance or repair;
- (I) Limitation on Capital Additions and Improvements.  
The Association's powers hereinabove enumerated shall be limited in that the Association shall have no authority to acquire and pay for out of the maintenance fund any acquisitions, capital additions and improvements, or structural alterations to the Common Areas (other than for purposes of maintaining, replacing or restoring portions of the Common Areas, subject to all the provisions of the Declaration and this Code) having a total cost in excess of Five Thousand Dollars (\$5,000.00), nor having an aggregate cost in any one (1) calendar year period in excess of Ten Thousand Dollars (\$10,000), without, in each case, the prior approval of the members of the Association entitled to exercise a majority of the voting power of the Association provided, however, so long as Developer has the authority to elect or designate any Board Members, the Developer's prior written consent to such expenditure shall be required. The limitations of expenditures by the Association contained in this Section shall not apply to repair of the Property due to casualty loss, emergency repairs immediately necessary for the preservation and safety of the Community or for the safety of persons or to avoid suspension of any necessary services. The foregoing provisions of this Section 1(I) also shall not apply to the

rehabilitation and renewal of obsolete property which shall be governed by the Declaration;

- (J) Miscellaneous.  
The Association shall pay such other costs and expenses required in the Declaration and in this Code.

Section 2. Rules. The Board of Directors, by vote of the members entitled to exercise a majority of the voting power of the Board, may adopt such reasonable rules and regulations and from time to time amend the same supplementing the rules and regulations set forth in the Declaration and this Code as it may deem advisable for the maintenance, conservation and beautification of the Community, and for the health, comfort, safety and general welfare of the owners and occupants of the Community. Written notice of such rules and regulations shall be given to all owners and occupants and the Community shall at all times be maintained subject to such rules and regulations. In an action or proceeding brought by the Association against an Owner and/or Occupant of a Living Unit to enforce such rules or regulations, the Association shall be entitled to collect costs of suit and reasonable attorneys' fees from such Owner and/or Occupant. In the event such supplemental rules and regulations shall conflict with any provisions of the Declaration or of this Code, the provisions of the Declaration and of this Code shall govern.

Section 3. No Active Business to be Conducted for Profit. Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all the owners or any of them.

Section 4. Special Services. The Association may arrange for the provision of any special services and facilities for the benefit of such owner; and/or occupants as may desire to pay for the same, including, without limitation, cleaning, repair and maintenance of Living Units. Fees for such special services and facilities shall be determined by the Board of Directors and may be charged directly to participating owners, or paid from the maintenance fund and levied as a special assessment due from the participants.

Section 5. Delegation of Duties. Nothing herein contained shall be construed so as to preclude the Association, through its Board of Directors and officers, from delegating to persons, firms or corporations of its choice, including any manager or managing agent, such duties and responsibilities of the Association as the Directors of the Association shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

Section 6. Applicable Laws. The Association shall be subject to and governed by the provisions of any statute adopted at any time and applicable to the Property; provided, however, that all inconsistencies between or among the permissive provisions of any statute and any provision of the Declaration and this Code, shall be resolved in favor of the Declaration and this Code, and any inconsistencies between any statute applicable to associations formed to administer property submitted to the fee-simple cluster development form of ownership, and the Articles or Code of the Association shall be resolved in favor of the statute. In the event of any

conflict or inconsistency between the provisions of the Declaration and the Articles or Code of the Association, the terms and provisions of the Declaration shall prevail, and the owners and all persons claiming under them covenant to vote in favor of such amendments in the Articles or Code as will remove such conflict or inconsistencies.

## ARTICLE V DETERMINATION AND PAYMENT OF ASSESSMENTS

Section 1. Payment of Assessments. Following the establishment of the Association and prior to the preparation of the estimated budget in accordance with Section 2 of this Article V, annual assessments shall be paid in monthly installments by Owners (except the Developer shall not be charged with any assessments for Parcels, land or Living Units it owns) in an amount estimated by the Board of Directors as being sufficient to cover the initial working capital requirements for the Association payable by each Owner.

In addition to such regular monthly assessments, each purchaser of a Living Unit from the Developer will be required to make, at the time such purchaser acquires title to a Living Unit, an initial capital contribution to the Association in the amount of Two Hundred Dollars (\$200.00). The general purpose of this contribution is to provide the Association with a portion of the necessary initial working capital and/or a contingency reserve. Such funds may be used for certain prepaid items (e.g., insurance premiums, utility deposits and organizational, equipment and supply costs) and for such other purposes as the Board may determine. This initial capital contribution is not an escrow or advance, is not refundable and shall not be required of the Developer, but only from those persons who or which purchase a Living Unit or Living Units from the Developer.

Regular monthly assessments shall be paid to the Association commencing on the first day of the calendar month immediately following the date on which the first Living Unit is sold and the deed evidencing such sale shall have been filed for record with the Cuyahoga County, Ohio Recorder and shall continue to be due and payable on the first day of each and every calendar month thereafter. Said assessments shall be deposited when received by the Association in an account established in the name of the Association at a bank or savings and loan association in Cuyahoga County, Ohio. Living Unit Owners shall continue to pay such monthly assessments as aforesaid until revised assessments are made by the Board of Directors in the manner herein provided.

Section 2. Preparation of Estimated Budget. The annual budget for the initial year shall be first determined by Developer in good faith in consultation with the management company. The annual assessment for the initial year shall be \$135.00/month or \$1,620.00/year per Living Unit or Parcel. Each year on or before December 1<sup>st</sup>, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and shall on or before December 15th notify each owner in writing as to the amount of such estimate, with reasonable itemization thereof and the Owner's



prorated share of such expenses. On or before January 1st of the ensuing year, and the 1st of each and every month of said year, each Owner shall be obligated to pay to the Association or as it may direct one-twelfth (1/12) of the assessment made pursuant to this Section. On or before the date of the annual meeting of each calendar year, the Association shall supply to all owners an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimate provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each owner's percentage of ownership in the Common Areas to the next monthly installments due from owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each owner's percentage of ownership in the Common Areas to the installments due in the succeeding six months after rendering of the accounting.

Section 3. Reserve for Contingencies and Replacements. The Association shall be obligated to build up and maintain a reasonable reserve to finance the cost of repair or replacement of the components of the Common Areas. Included in the reserve is the amount payable by each Purchaser of a Living Unit at the time such Purchaser acquires title to his Living Unit.

Upon the sale of a Living Unit by any Owner, such Owner shall have no right to any portion of the funds in the reserve account; nor shall any such Owner have any claim against the Association with respect thereto. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall be charged first against such reserve. If said "estimated cash requirement" proves inadequate for any reason, including non-payment of any owner's assessment, the Association shall prepare an estimate of the additional cash requirements then necessary, or necessary for the balance of the year, which additional amount of cash requirements shall be assessed to the owners according to each owner's percentage of ownership in the Common Areas. The Association shall serve notice of such further assessment on all owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly maintenance payment which is due not more than ten (10) days after the delivery or mailing of such notice of further assessments. All owners shall be obligated to pay the adjusted monthly amount.

Section 4. Budget for First Year. When the first Board of Directors elected hereunder takes office, the Association shall determine the "estimated cash requirement" as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31st of the calendar year in which said election occurs. Assessments shall be levied against the owners during said period as provided in Section 2 of this Article V.

Section 5. Failure to Prepare Annual Budget. The failure or delay of the Association to prepare or serve the annual or adjusted estimate on the owner shall not constitute a waiver or release in any manner of such owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the owner shall continue to pay the monthly maintenance charge at the existing monthly rate established for the previous period until the

monthly maintenance payment which is due not more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

Section 6. Books and Records of Association. The Association shall keep full and correct books of account and the same shall be open for inspection by any owner or any representative of an owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Owner. Upon ten (10) days' notice to the Board of Directors and upon payment of a reasonable fee, any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner.

Section 7. Status of Funds Collected by Association. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all of the owners, and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the use, benefit and account of all of the owners in proportion to each owner's percentage ownership in the Common Areas.

Section 8. Annual Statements. Within one hundred twenty (120) days after the end of each fiscal year of the Association, the Board shall furnish to each Owner a financial statement consisting of: (A) a balance sheet containing a summary of the assets and liabilities of the association as of the date of such balance sheet; and (B) a statement of the income and expenses for the period commencing with the date marking the end of the period for which the last preceding statement of income and expenses required hereunder was made and ending with the date of said statement, or in the case of the first such statement, from the date of formation of the Association to the date of said statement. The financial statement shall have appended thereto a certificate signed by the President or the Vice President or Secretary or the Treasurer of the Association or by a public accountant or firm of public accountants to the effect that the financial statement presents fairly the financial position of the Association and the results of its operations in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period except as may be specified therein.

Section 9. Annual Audit. The books of the Association shall be reviewed once a year by the Board of Directors, and such review shall be completed prior to each annual meeting. If requested by two or more members of the Board of Directors, such review shall be made by a Certified Public Accountant. In addition, and at any time, if requested by Owners having more than fifty percent (50%) of the voting power of the Association, or upon the request of two or more members of the Board of Directors, the Board shall cause an additional review to be made.

Section 10. Remedies for Failure to Pay Assessments. If an owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the Board of Directors may bring suit for and on behalf of themselves and as representatives of all owners, to enforce collection thereof or to foreclose the lien therefor as provided in the Declaration, and, there shall be added to the amount due the costs of said suit, together with legal interest and reasonable attorneys' fees to be fixed by the Court. To the extent permitted by the Declaration, any decision or any statute or law now or hereafter effective, the amount of any delinquent and

unpaid charges or assessments, and interest, costs and fees as above provided shall be and become a lien or charge against the Property of the owner involved when payable and may be foreclosed by an action brought in the name of the Board of Directors as in the case of foreclosure of liens against real estate, as provided in the Declaration. The members of the Board of Directors and their successors in office, acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Any mortgagee shall be entitled to written notice of such failure to pay such assessment. The Board of Directors shall have the power to suspend the voting rights and the right to use of the Common Areas of an Owner during any period in which such Owner shall be in default in the payment of any assessment levied by the Association. In addition, each Owner shall be personally liable for all assessments levied by the Association against his Living Unit during the period he has an ownership interest therein, and any assessment not paid within thirty (30) days after the same shall become due and payable, shall bear interest at the maximum rate allowed by law until such time as the assessment has been paid in full and the Association shall be entitled to levy against the delinquent Owner a service charge of five percent (5%) of the amount of the delinquent payment in order to defray the cost of collection.

Any encumbrancer may from time to time request in writing a written statement from the Board of Directors setting forth the unpaid Common Expenses with respect to the Living Unit covered by his or its encumbrance and unless the request shall be complied with within twenty (20) days, all unpaid Common Expenses which become due prior to the date of the making of such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a Living Unit may pay any unpaid Common Expenses payable with respect to such Living Unit and upon such payment such encumbrancer shall have a lien on such Living Unit for the amounts paid at the same rank as the lien of his encumbrance.

## ARTICLE VI INDEMNIFICATION

Section 1. In General. The Association shall indemnify any member of the Board, officer, employee, or agent of the Association or any former member of the Board, officer, employee or agent of the Association and/or its or their respective heirs, executors and administrators, against reasonable expenses, including attorneys' fees, judgments, decrees, fines, penalties or amounts paid in settlement actually and necessarily incurred by him in connection with the determination of any pending or threatened action, suit, or proceeding, criminal or civil, to which he is or may be made a party by reason of being or having been such member of the Board, officer, employee or agent of the Association, provided it is determined in the manner hereinafter set forth: (A) that such member of the Board, officer, employee or agent of the Association was not, and is not, adjudicated to have been negligent or guilty of misconduct in the performance of his duty to the Association, (B) that such member of the Board acted in good faith in what he reasonably believed to be in the best interest of the Association, (C) that, in any matter the subject of a criminal action, suit or proceeding, such Board member had no reasonable cause to believe that this conduct was unlawful, and (D) in case of settlement, that the amount paid in the settlement was reasonable. Such determination shall be made either by the Board of the Association acting at a meeting at which a quorum consisting of members of the Board who

are not parties to or threatened with any such action, suit or proceeding is present, or, in the event of settlement, by a written opinion of independent legal counsel selected by the Board.

Section 2. Advance of Expenses. Funds to cover expenses, including attorney fees, with respect to any pending or threatened action, suit, or proceeding may be advanced by the Association prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the recipient to repay such amounts unless it shall ultimately be determined that he is entitled to indemnification hereunder.

Section 3. Indemnification Not Exclusive; Insurance. The indemnification provided for in this Article VI shall not be exclusive, but shall be in addition to any other rights to which any person may be entitled under the Articles of Incorporation, Rules and Regulations of the Association, any agreement, any insurance provided by the Association, or otherwise. The Association may purchase and maintain insurance on behalf of any person who is or was a member of the Board, officer, agent or employee of the association against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

Section 4. Indemnification by Owners. The members of the Board and officers of the Association shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the members of the Board and officers of the Association against all contractual liability to third parties arising out of contracts made on behalf of the Association except with respect to any such contracts made in bad faith or contrary to the provisions of the Declaration or this Code. It is intended that the members of the Board and officers of the Association shall have no personal liability with respect to contracts entered into on behalf of the Association. Every agreement made by any members of the Board, officer, employee or agent of the Association or by a management company, if any, on behalf of the Association, shall provide that such members of the Board, officer, employee or agent of the Association, or the management company, as the case may be, is acting only as agent for the Association and shall have no personal liability thereunder (except as Owner), and that each Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Areas bears to the total percentage interest of all Owners in the Common Areas.

Section 5. Cost of Indemnification. Any sum paid or advanced by the Association under this Article VI shall constitute a Common Expense and the Association and the Board shall have the power to raise and the responsibility for raising, by special assessment or otherwise, any sums required to discharge its obligations under this Article VI; provided, however, that the liability of any Owner arising out of any contract made by or other acts of any member of the Board, officer, employee or agent of the Association, or out of the aforesaid indemnity in favor of such member of the Board, officer, employee or agent of the Association, shall be limited to such proportion of the total liability hereunder as said Owner's percentage of interest in the Common Areas bears to the total percentage interest of all the Unit Owners in the Common Areas.

ARTICLE VII  
GENERAL PROVISIONS

Section 1. Copies of Notice to Mortgage Lenders: Rights of First Mortgagees.

(A) Upon written request to the Board of Directors by the holder of any duly recorded mortgage or trust deed against any Unit ownership, the Board of Directors shall give such mortgage holder a copy of any and all notices permitted or required by the Declaration or this Code to be given to the owner or owners whose Living Unit ownership is subject to such mortgage or trust deed.

(B) A first mortgagee of a Living Unit shall be entitled to written notice from the Association of any default by its mortgagor Owner which is not cured within sixty (60) days. Any first mortgagee may from time to time request in writing a written statement from the Board of Directors setting forth any and all unpaid assessments due and owing from its mortgagor Owner with respect to the Living Unit subject to the lien of its mortgage and such request shall be complied with within fifteen (15) days from receipt thereof. Any first mortgagee holding a mortgage on a Living Unit may pay any unpaid Common Expenses assessed with respect to such Unit and upon such payment, such first mortgagee shall have a lien on such Unit for the amounts so paid at the same rank as the lien of its mortgage.

Section 2. Service of Notices on the Board of Directors. Notices required to be given to the Board of Directors or to the Association may be delivered to any member of the Board of Directors or officer of the Association either personally or by mail addressed to such member or officer at his Living Unit.

Section 3. Service of Notices on Devisees and Personal Representatives. Notices required to be given any devisees or personal representatives of a deceased owner may be delivered either personally or by mail to such party at his, her or its address appearing on the records of the court wherein the estate of such deceased owner is being administered.

Section 4. Non-Waiver of Covenants. No covenants, restrictions, conditions, obligations or provisions contained in the Declaration or this Code shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

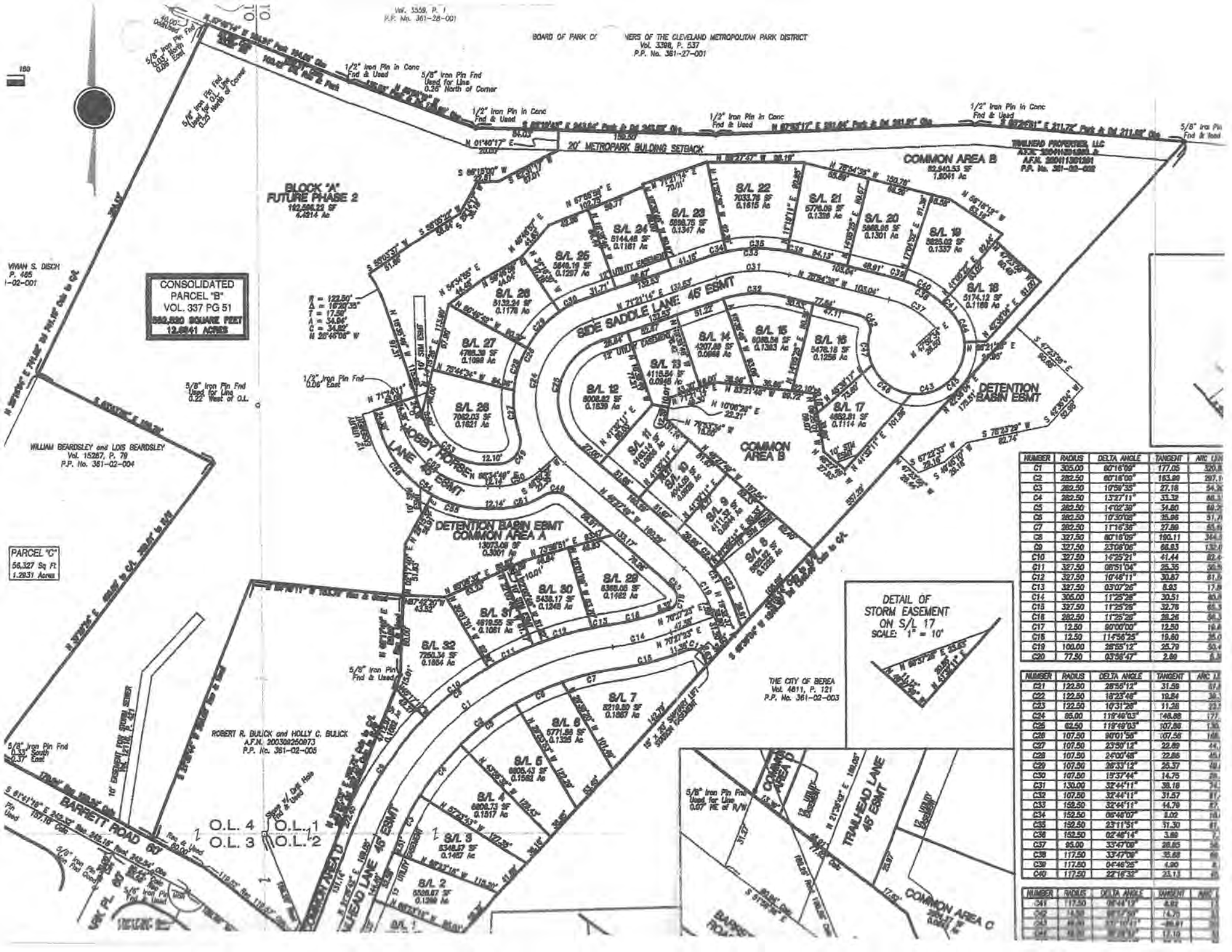
Section 5. Agreements Binding. All agreements and determinations lawfully made by the Association in accordance with the procedures established in the Declaration and this Code shall be deemed to be binding on all Owners, and their respective heirs, executors, administrators, successors and assigns.

Section 6. Notices of Mortgages. Any owner who mortgages his unit shall notify the Association, in such manner as the Association may direct, of the name and address of his mortgagee and thereafter shall notify the Association of the payment, cancellation or other



EXHIBIT

“D”



**CONSOLIDATED PARCEL "B"**  
VOL. 337 PG 51  
552,630 SQUARE FEET  
12.6841 ACRES

WYAN S. DISCH  
P. 465  
1-02-001

WILLIAM BEARDSLEY and LOIS BEARDSLEY  
Vol. 15287, P. 79  
P.P. No. 361-02-004

PARCEL "C"  
56,327 Sq Ft  
1.2831 Acres



THE CITY OF BEREA  
Vol. 4811, P. 121  
P.P. No. 361-02-003

ROBERT R. BULLICK and HOLLY C. BULLICK  
A.F.N. 200308250873  
P.P. No. 361-02-005

O.L. 4  
O.L. 1  
O.L. 3  
O.L. 2

NUMBER	RADIUS	DELTA ANGLE	TANGENT	ARC LENGTH
C1	305.00	80°16'09"	177.05	300.81
C2	282.50	80°18'09"	163.89	287.11
C3	282.50	10°58'35"	27.18	54.36
C4	282.50	13°27'11"	33.32	66.31
C5	282.50	14°02'36"	34.60	68.25
C6	282.50	10°30'08"	35.06	51.71
C7	282.50	11°16'36"	27.86	55.83
C8	327.50	80°18'09"	190.11	344.83
C9	327.50	23°06'06"	68.83	132.01
C10	327.50	14°25'21"	41.44	82.42
C11	327.50	09°51'04"	25.35	50.68
C12	327.50	10°46'11"	30.87	61.61
C13	327.50	03°07'26"	8.93	17.81
C14	305.00	11°25'28"	30.51	60.81
C15	327.50	11°25'28"	32.76	65.31
C16	282.50	11°25'28"	28.26	56.81
C17	12.50	90°00'00"	12.50	19.63
C18	12.50	114°58'25"	19.80	35.01
C19	100.00	28°55'12"	25.79	50.41
C20	77.50	03°58'47"	2.89	5.81

NUMBER	RADIUS	DELTA ANGLE	TANGENT	ARC LENGTH
C21	122.50	28°55'12"	31.59	61.81
C22	122.50	18°23'48"	19.84	39.21
C23	122.50	10°31'28"	11.38	22.31
C24	85.00	118°48'03"	148.89	172.11
C25	82.50	118°48'03"	107.88	136.11
C26	107.50	80°01'56"	107.58	168.11
C27	107.50	23°59'12"	22.89	44.41
C28	107.50	24°00'48"	22.86	45.11
C29	107.50	28°33'12"	25.57	49.11
C30	187.50	19°37'44"	14.76	29.11
C31	130.00	32°44'11"	38.18	74.11
C32	107.50	32°44'11"	31.57	61.11
C33	158.50	32°44'11"	14.79	29.11
C34	182.50	08°46'07"	2.02	4.01
C35	182.50	23°11'51"	31.30	61.11
C36	152.50	02°48'14"	3.88	7.61
C37	95.00	33°47'08"	28.85	56.11
C38	117.50	33°47'08"	35.68	69.11
C39	117.50	04°46'25"	4.90	9.61
C40	117.50	22°16'32"	23.13	45.11

NUMBER	RADIUS	DELTA ANGLE	TANGENT	ARC LENGTH
C41	117.50	04°41'12"	4.82	9.61
C42	117.50	04°41'12"	4.82	9.61
C43	117.50	04°41'12"	4.82	9.61
C44	117.50	04°41'12"	4.82	9.61





SCALE: 1" = 50'

**LEGEND**

- DENOTES MONUMENT ASSEMBLY FOUND (AS NOTED)
  - DENOTES STONE w/ DRILL HOLE FOUND (AS NOTED)
  - DENOTES PIN OR PIPE FOUND (AS NOTED)
  - DENOTES 5/8" IRON PIN SET WITH "N" NEPT 7315" CAP (UNLESS OTHERWISE NOTED)
- ABBREVIATIONS**
- Calc - CALCULATED
  - DE - DEED
  - FD - FOUND
  - ME - MEASURED
  - OS - OBSERVED
  - RE - RETURN

**SURVEY REFERENCES**

DISCH and WYMAN S. DISCH  
 SPLIT MAP FOR THE COLLEGE AS PREPARED BY JAMES W. DISCH, 12779, P. 465  
 ROOT & ASSOCIATES, DATED JUNE 14, 2003 AND RECORDED NO. 381-02-001  
 VOLUME 327 OF MAPS, PAGE 1 OF OHIOHOA COUNTY RECORDS.

CENTRAL SURVEY INFORMATION OF BARRETT ROAD BY CHARLES ROSE DATED FEBRUARY 8, 1962 AS SHOWN IN FIELD BOOK 737, PAGE 3 THRU 14.

MAP OF BARRETT ROAD AS PREPARED BY OHIOHOA COUNTY SURVEYOR FRANK B. LAMON, DATED SEPTEMBER 1955 AND RECORDED IN OHIOHOA COUNTY ENGINEER'S RECORD BOOK "M", PAGE 173 (MAP 13031).

QUANTITATIVE SURVEY LINES PREPARED FOR THE BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT.

**CONSOLIDATED PARCEL "B"**  
 VOL. 337 PG 51  
 902,630 SQUARE FEET  
 12.6641 ACRES

WILLIAM BEARDSLEY and LOIS BEARDSLEY  
 Vol. 15287, P. 79  
 P.P. No. 381-02-004

**PARCEL "C"**  
 56,327 Sq Ft  
 1.2931 Acres

ROBERT R. BULLOCK and HOLLY C. BULLOCK  
 A.F.N. 200308250973  
 P.P. No. 381-02-005

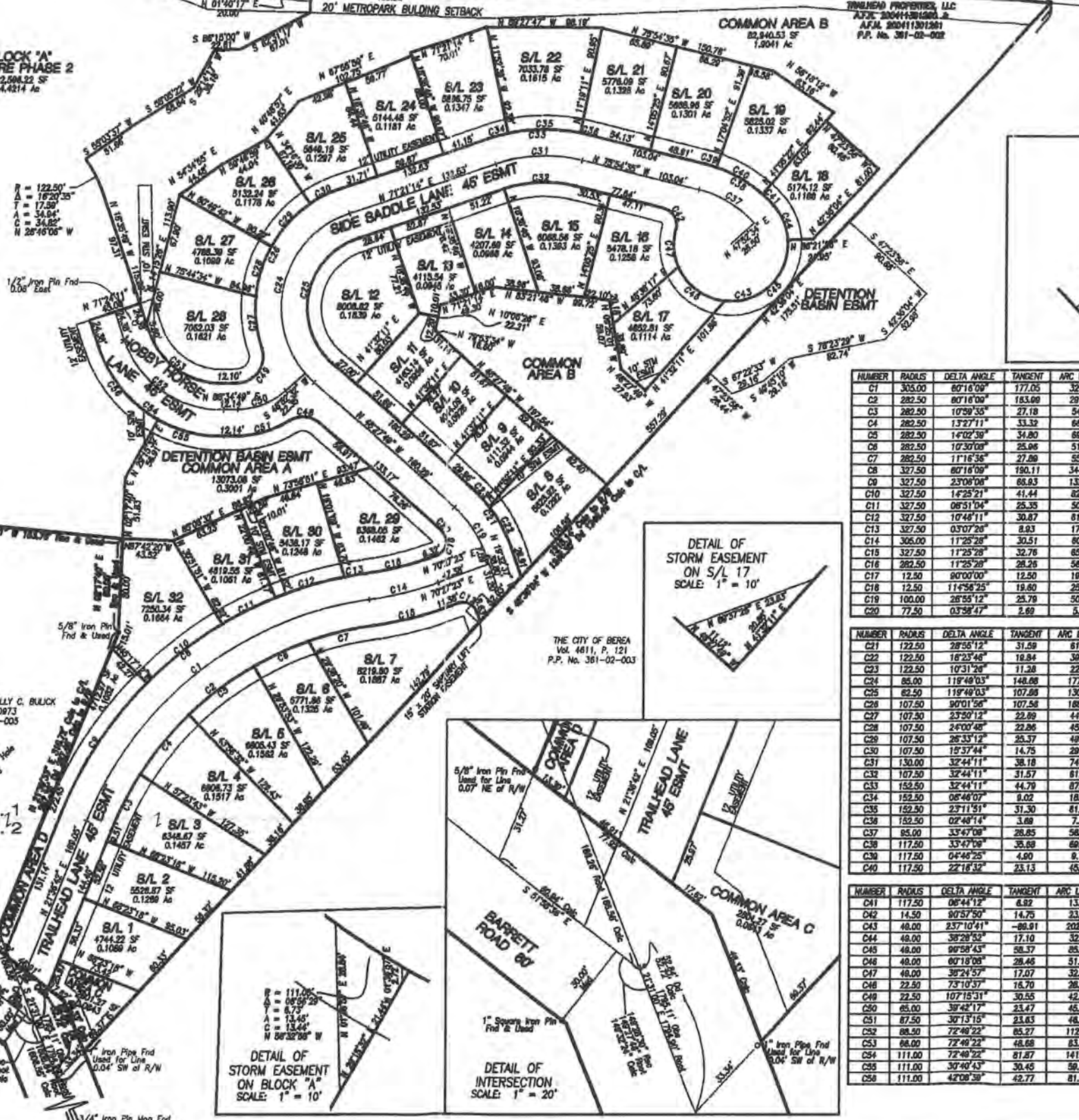
THE CITY OF BEREA  
 Vol. 4611, P. 121  
 P.P. No. 381-02-003

**DETAIL OF STORM EASEMENT ON BLOCK "A"**  
 SCALE: 1" = 10'

**DETAIL OF INTERSECTION SCALE: 1" = 20'**

**DETAIL OF STORM EASEMENT ON S/L 28**  
 SCALE: 1" = 10'

**DETAIL OF STORM EASEMENT ON S/L 8 & S/L 9**  
 SCALE: 1" = 20'



NUMBER	RADIUS	DELTA ANGLE	TANGENT	ARC LENGTH	CHORD LENGTH	CHORD DIRECTION
C1	305.00	60°16'00"	177.05	320.83	308.24	S 51°44'46" W
C2	282.50	60°16'00"	163.09	297.16	283.65	N 51°44'46" E
C3	282.50	10°59'30"	27.18	54.30	54.12	S 27°06'30" W
C4	282.50	13°27'11"	33.32	64.33	66.18	S 36°16'53" W
C5	282.50	14°02'39"	34.80	69.25	69.07	S 53°04'47" W
C6	282.50	10°30'08"	25.96	51.78	51.71	N 65°21'11" E
C7	282.50	11°16'36"	27.96	55.60	55.51	N 78°14'33" E
C8	327.50	60°16'00"	190.11	344.50	326.83	S 51°44'46" W
C9	327.50	23°06'06"	66.83	132.05	131.16	S 33°08'45" W
C10	327.50	14°25'21"	41.44	82.44	82.22	S 51°55'29" E
C11	327.50	06°51'04"	25.35	50.59	50.54	S 63°33'41" W
C12	327.50	10°46'11"	30.87	61.56	61.47	N 73°22'10" E
C13	327.50	03°07'26"	8.93	17.86	17.85	N 60°19'06" E
C14	305.00	11°25'28"	30.51	60.81	60.71	S 78°10'07" W
C15	327.50	11°25'28"	32.76	65.30	65.19	S 78°10'07" W
C16	282.50	11°25'28"	28.26	56.33	56.24	S 78°10'07" W
C17	12.50	90°00'00"	12.50	18.63	17.89	S 64°32'57" E
C18	12.50	114°56'25"	19.60	25.08	21.06	N 12°59'10" E
C19	100.00	26°55'12"	23.79	50.48	46.84	S 34°00'13" E
C20	77.50	03°58'47"	2.69	5.38	5.38	S 45°28'28" E

NUMBER	RADIUS	DELTA ANGLE	TANGENT	ARC LENGTH	CHORD LENGTH	CHORD DIRECTION
C21	122.50	28°56'12"	31.59	61.83	61.18	S 34°00'13" E
C22	122.50	16°23'46"	19.84	39.33	39.16	N 28°44'30" W
C23	122.50	10°31'26"	11.38	22.50	22.47	S 43°12'06" E
C24	85.00	119°49'03"	148.06	177.75	147.06	N 11°26'42" E
C25	82.50	119°49'03"	107.66	130.70	108.15	S 11°26'42" W
C26	107.50	90°01'56"	107.56	188.82	182.07	S 28°20'16" W
C27	107.50	23°50'12"	22.89	44.72	44.40	S 06°45'36" E
C28	107.50	24°00'48"	22.86	45.05	44.73	N 17°08'54" E
C29	107.50	26°33'12"	20.37	40.82	40.38	N 45°28'54" E
C30	107.50	15°37'44"	14.75	29.32	29.13	S 63°32'22" W
C31	130.00	32°44'11"	38.18	74.98	73.27	S 67°43'20" W
C32	107.50	32°44'11"	31.57	61.42	60.59	S 67°43'20" W
C33	152.50	32°44'11"	44.79	87.13	85.85	N 67°43'20" E
C34	152.50	06°46'07"	8.02	16.02	16.00	N 75°44'18" W
C35	152.50	23°11'51"	31.30	61.74	61.32	N 69°43'16" E
C36	152.50	02°48'14"	3.69	7.37	7.37	S 77°17'42" E
C37	85.00	33°47'08"	28.85	56.02	55.21	S 60°01'01" E
C38	117.50	33°47'08"	35.68	69.29	68.29	S 60°01'01" E
C39	117.50	04°46'25"	4.50	8.79	8.79	N 73°31'22" W
C40	117.50	22°16'32"	23.13	45.68	45.39	S 56°58'54" E

NUMBER	RADIUS	DELTA ANGLE	TANGENT	ARC LENGTH	CHORD LENGTH	CHORD DIRECTION
D41	117.50	06°44'12"	6.92	13.82	13.81	S 45°29'32" E
D42	14.50	90°57'50"	14.75	23.02	20.66	S 30°25'40" E
D43	48.00	237°10'41"	-88.81	202.84	86.05	S 76°27'54" W
D44	48.00	38°28'52"	17.10	32.91	32.29	S 22°53'00" E
D45	48.00	99°58'43"	88.37	85.50	78.06	S 48°20'48" W
D46	48.00	60°18'08"	28.46	51.57	46.22	N 53°30'47" W
D47	48.00	38°24'57"	17.07	32.85	32.24	N 04°06'14" W
D48	22.50	73°10'37"	18.70	28.74	26.62	S 66°03'08" E
D49	22.50	107°15'31"	30.55	42.12	38.23	S 34°57'04" E
D50	85.00	39°42'17"	23.47	45.04	44.15	N 69°43'41" E
D51	87.50	30°13'15"	23.83	46.15	46.82	S 73°28'12" W
D52	88.50	72°40'22"	85.27	112.48	105.06	N 66°00'30" W
D53	88.50	72°40'22"	48.68	83.89	78.35	S 66°00'30" E
D54	111.00	72°40'22"	81.87	141.08	131.77	S 66°00'30" E
D55	111.00	30°40'43"	30.45	58.43	58.73	S 76°04'48" W
D56	111.00	42°08'38"	42.77	81.65	79.82	N 30°40'08" W

SUBDIVISION PLAT OF: TRAILHEAD AT ROCKY RIVER  
 PLANNERS | ENGINEERS | SURVEYORS  
 m NFFEdesign  
 Horizontal Scale: 1" = 50'  
 Original Date: Mar 21, 2006  
 Drawn By: STP/DLN  
 Project Number: 7142  
 Sheet: 2

**Exhibit D**  
 to the Construction Agreement  
 Copy of Plat  
 1 page

Plat Recorded May 6, 2005  
 Vol. 338 page 97

EXHIBITS  
“Fi, Fii, Fiii”

# RULES AND REGULATIONS

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## *Environment of Common Areas*

### A. General

- i. Playing in the street is prohibited.
- ii. Skateboards and skateboard ramps, basketball hoops and soccer nets are prohibited on the property.
- iii. Residents must not pour or allow the spillage of any solvents or any other volatile or flammable material in the storm sewers or on the Common Area.
- iv. All personal property, such as seasonal furniture, toys, bicycles, etc. must be kept inside the garage, patio area or deck when not in use.
- v. Retractable awnings are permitted with written approval by the Homeowners Association before installation. The colors for the awnings must match the color of the home, only. Awnings are permitted over rear deck and patio areas only.
- vi. Solicitation by any commercial or other enterprise is prohibited within The Association. Public sales of any kind, including garage sales and tag sales are prohibited unless approved in advance, in writing by the Board of Directors.
- vii. Nothing shall be done in or on any home or Common Area, which may impair the structural integrity of the building.
- viii. No solar panels shall be permitted.
- ix. Driveway additions and or extensions are not permitted.
- x. All Homeowners must use the US Post Office secured mailboxes provided. No individual mailboxes will be allowed.

### B. Motor Vehicles

- i. For the purpose of loading or unloading and preparation for a trip, a recreational vehicle may be parked on the home's driveway space for a period of time not to exceed Twenty Four (24) hours
- ii. Moving vans are permitted to be temporarily parked in the driveways and/or on streets between 6:00 a.m. and 9:00 p.m., but must not obstruct traffic.
- iii. Overnight parking by guests must utilize spaces in the following order:
  1. Within the garage
  2. In front of the garage door.
  3. On the parking pad.
- iv. Overnight parking on the streets is prohibited to permit unobstructed access for emergency vehicles.
- v. Inoperable vehicles (with flat tires, expired license tags, etc.), or vehicles which cannot be identified as belonging to a Resident, which are parked in any Common Area for more than forty-eight (48) consecutive hours will be towed off the premises at the vehicle owner's expense.

- vi. Parking on any grassed or lawn area is prohibited.
- vii. The speed limit is posted at 15 miles per hour on all Trailhead Village streets.
- viii. For the courtesy of all Homeowners, motorcycles and motorized vehicles shall have noise baffles or noise restraints.

C. Garages

- i. Garage doors must be closed except for ingress and egress or purposeful activity (e.g. yard work, washing cars, or entertaining.)  
Residents must use their garage as their primary parking space with the owner's driveway being the second place to park their vehicle(s).

D. Signs

- i. No sign or advertising of any nature shall be displayed on any portion of the property except: a professionally prepared sign not to exceed 4 square feet advertising the unit for sale; or, (1) professionally produced security sign no bigger than 1 square foot. .

E. Television Service

- i. These guidelines are to be interpreted so as to balance the right of the individual owners to receive acceptable quality broadcast signals in accordance with F.C.C. regulations with the right and duty of the Association to preserve, protect and enhance the value of the properties within the subdivision.
- ii. Prohibited Apparatus. All exterior antennas are prohibited. Permitted are:
  - 1. A satellite dish that is designed to receive direct broadcast satellite service, including direct-to-home satellite services that is one meter or less in diameter.

2. Permitted Locations

A satellite dish must be located in the rear yard or on the rear of the dwelling unit in such a manner so as not to be visible by a person of normal height standing at the edge of the street directly in front of the dwelling unit. Other locations are permitted if placement under these guidelines precludes reception of an acceptable quality signal. In such case, the owner and the Board of Directors shall attempt to find a location with the least visual impact upon the surrounding properties. An "acceptable quality signal" is one that is intended for reception in the viewing area and is consistent with the quality of signals received by others in the immediate vicinity. No location shall be permitted if installation creates a line of sight problem for drivers in the vicinity. The association may prohibit a location that imposes a legitimate safety concern. An

example of a location that imposes a legitimate safety concern is one that is near high voltage power lines or one where the guy wires obstruct legitimate pedestrian access.

3. Continued Maintenance

- a. Each owner shall maintain any satellite dish in a reasonable manner so as not to become unsightly. Each owner shall remove any dish upon cessation of its use.

F. Pools , Spas and Hot Tubs

i. Pools

No above ground or in ground swimming pools shall be permitted. Small portable “kiddie” pools no greater than 6 feet in diameter shall be permitted on the deck and patio behind the dwelling unit so long as said pool is not in place for more than seventy-two (72) consecutive hours.

ii. Hot Tubs

Hot tubs shall be permitted provided that hot tubs must be above ground incorporated into a deck. All hot tubs must be screened with a privacy fence approved by the Board.

- iii. Hot tubs must comply with local city installation and maintenance guidelines.

G. Fences

- i. Fences are not permitted anywhere on the property other than decorative (split rail) that have been approved by the Board of Directors or installed by the original builder. No perimeter fences of any kind are permitted.

### *Owner / Resident Responsibilities*

A. General

- i. Only patio furniture, grills, umbrellas, gliders, deck boxes and kiddie pools as described above are to be maintained within the patio and deck area. Other personal storage is not permitted within the patio and deck area.
- ii. One (1) American Flag per unit may be displayed in a window, on the door, fence or on the exterior of the building so long as it is attached to the wood trim only. The American Flag may be displayed at any time in keeping with the recognized customs. No other flags will be permitted.

## B. Snow Removal

- i. Residents shall park all vehicles inside their garage during the snow removal season.
- ii. If a vehicle parked in the driveway impedes snow removal, the Homeowner will be responsible for his/her own snow removal at his/her own cost.
- iii. Residents are encouraged to use an ice melt product on areas near the individual home. Rock salt is prohibited and must not be used as an ice melt product. Calcium Chloride is recommended, as rock salt is more likely to damage the concrete surfaces and detracts from the appearance of the community.

## *Architectural Guidelines*

### A. General

A written request with supporting detail and diagrams for any type of modification, installation, or additions to each home must be submitted to the Board for review. Written approval must be obtained from the Board prior to the installation or commencement of the project.

- i. Following written approval from the Board, it will be the Homeowner's responsibility to secure necessary building permits and to obtain approval from the City of Berea.
- ii. Once the material for the exterior modification is placed on the property, the work must begin and continue through the completion within a reasonable time frame and in a reasonable manner that will not detract from property appearance or inconvenience neighbors and/or Association service contractors or otherwise cause a disturbance.
- iii. In the event damage occurs as a result of any modification, addition or change to the exterior of the building or to any Common Area of the property, repairs must be made immediately at the Homeowner's expense and to the satisfaction of the Board.
- iv. It is the responsibility of the seller to disclose to a new Homeowner any and all architectural change or improvements that are the responsibility of the Homeowner to repair or to maintain, including landscaping. If necessary, contact the Board of Directors to review the architectural correspondence file. Document must be recorded and conveyed to subsequent owners.

### B. Architectural Approval Procedure

- i. Review of architectural change requests, submitted by a Homeowner, will be in accordance with the following schedule.
  1. Written request is submitted to the Design and Review Committee by filling out the appropriate request form.

2. The Design and Review Committee will meet to consider the request and to check against the Rules and Regulations.
  3. The Design and Review Committee will submit their recommendation to the Board.
  4. The Board will make the final decision and notify the Resident in writing.
  5. The process may take up to 21 days, so Residents need to plan ahead for any architectural changes they wish to make.
  6. Failure on part of the Board of Directors to respond shall not constitute an approval.
- ii. An applicant may request the meeting of the Board of Directors to discuss denials.
  - iii. Architectural Integrity

According to the planned unit Development concept the established characteristics of Trailhead Village are Craftsman Style homes with stone fronts and the use of three (3) to four (4) historical colors. All existing or future homes must conform to these characteristics

#### C. Masonry

- i. With respect to home masonry, the community should maintain a standard look where all homes have the color of a masonry foundation. If painted, the masonry should match the original color of the masonry. The homeowner may not extend the color of the siding to the foundation.

#### D. Storm Doors

- i. Storm door may be installed as long as they are white and are of the same type of style as those found at Trailhead Village.
  1. Doorframes must be white and full clear view. A divider strip or grill is permitted.
  2. Glass must be clear.
  3. The Homeowner shall have the option of converting the storm door to a screen door for warm weather use if screen inserts are a standard part of the door.
  4. Maintenance and upkeep of the storm door is the Homeowners responsibility.

#### E. Window Replacement

1. Installation of replacement windows must have prior Board approval, except in case of damage where the exact-for-like replacement would be made.

2. Windows, when replaced by the Homeowner, must be identical in appearance to the existing windows. An upgrade in the quality of window may be approved providing replacement windows are identical in appearance to the existing windows.
3. Maintenance, repair and replacement of windows are a Homeowner's responsibility.

F. Exterior Lighting

- 1.
2. No additional lighting beyond what the builder supplies will be permitted in the front of the home.
3. Installation of exterior lighting and/or landscape lighting in the rear of the home requires prior written Board approval.

## *Landscaping*

A. General

- i. Trees and shrubs must not be planted, transplanted or removed or any changes made to the exterior landscaping unless material is a replacement with identical plant, without prior written approval of the Board.
- ii. The use of railroad ties, landscaping timbers, bricks, rocks and/or other such items used as shrub bed enclosure is prohibited without prior written approval of the Board.
- iii. Residents desiring to change or add landscape plantings in the area of their home must submit written specifications to the landscape committee and obtain written Board approval prior to installation.
- iv. A maximum of three (3) flower/plant pots per home are permitted in the front of the house but must not be placed in any lawn area.
- v. The following items are prohibited in the outside area of the homeowners residence any type of statue, statuette, yard or lawn ornament, artificial flowers, , swing sets, jungle gyms ,and/or ornamental rocks or stones (with the exception of area around HVAC or under exterior faucet).

B. Shrub Beds

- i. The installation of additional shrub beds or removal of existing shrub beds must have prior written Board approval.
- ii. Shrub beds installed by a Homeowner or Resident must be covered in a dark, shredded bulk mulch typically used by landscape contractors and match the type installed in the Common Areas. Wood chips, gravel type stones or any other decorative shrub bed coverings are prohibited.
- iii. The Owner shall maintain shrub beds installed by a Homeowner or Resident in a manner that will not detract from the overall landscaping appearance.



- iv. Plantings shall be consistent in height and size with existing plantings.
- v. The variety of plant material selected by a Homeowner must be of a species that will not encroach upon or cause damage to the home, Common Areas or any utility service line.
- vi. Plantings installed by a Resident must not, in any way, be an obstruction for the landscaper.
- vii. The landscaper shall not be responsible for maintenance of the beds, shrubs or trees installed by Homeowners.

#### C. Seasonal Flowers

- i. Seasonal flowers planted in planting beds adjacent to the home do not require prior written Board approval. However, the height and size of flowers must be consistent with the surrounding shrub bed plantings. Examples of unacceptable flowers include: sunflowers, climbing roses, flowering vines and trellises. Exception would apply to flowers planted for the purpose of utilizing a trellis installed by the original builder.
- ii. Flowers planted by a Resident must be removed at the end of the growing season and maintained by the Resident in a manner that does not distract from the appearance of the Community.
- iii. If these requirements are violated, the Homeowner will be contacted and required to remove the plantings.

#### D. Trees

- i. Type of tree and location, must have written Board approval prior to installation.
- ii. The type of tree must be a variety that will not encroach upon or cause damage to the home, Common Area or utility service lines. Example of an unacceptable tree is a weeping willow.
- iii. A tree ring must be created and maintained by the Resident around the base of the tree in an effort to prevent damage from landscaping equipment. The tree ring must be covered with dark shredded bark mulch typically used by landscape contractors. Wood chips, gravel stones or any other decorative shrub bed coverings are prohibited.
- iv. When planting a tree, the Homeowner shall be responsible for the damage that may occur to underground utility service connections or lines during the time the tree is being planted as well as for any future damage that may be caused as a result of growth of the tree. Owners must call the Ohio Utilities Protection Service (1-800-686-7826) forty-eight (48) hours before digging.
- v. Trees planted by a Homeowner must be planted in such a manner so as not to create obstructions for the landscape service contractor.

- vi. The Owner and/or subsequent purchaser of the home must maintain all landscape plantings installed by a Homeowner. The plantings will become the sole responsibility of the Homeowner; the Association will not be responsible for the care and/or maintenance of such plantings.

E. Other Plantings

Residents desiring to change or add landscape plantings in the area of their home must submit written specifications and obtain written Board approval

F. Landscape Approval Procedure

- i. Review of landscape change requests, submitted by a Homeowner, will be in accordance with the following schedule.
- ii. Written request is submitted to the Landscape Committee by filling out the appropriate request form.
- iii. The Landscape Committee will meet to consider the request and to check against the rules and regulations.
- iv. Their recommendations will be submitted to the Board of Directors.
- v. The Board will make the final decision and notify the resident in writing
- vi. The process may take up to 21 days, so residents need to plan ahead for any landscape additions or changes they may wish to make.

### *Home / Lot Restrictions*

A. General

The boundaries of the individually owned home and everything within these boundaries built and installed for the exclusive use of said home is "Home Sweet Home" and is the Owner/Resident's responsibility to maintain. Once the warranty on builder landscape materials expires, the homeowner assumes responsibility and liability for said materials.

B. Pets

- i. Pets must not be permitted to run loose on the property. All animals, when outdoors, must be kept on a leash not more than six (6) feet in length.
- ii. No pet shall be tethered in the Common Area or around any tree/shrub at any time; nor shall any pet be tied to a patio fence or housed outside of a home at any time.
- iii. Pet owners will be held liable for all damages caused by their pets to any Common Area including, but not limited to shrubs, bushes, trees and grass.

- iv. Due to the proximity of the homes, invisible fences are not permitted.

C. Rubbish Removal

- i. Rubbish containers and recycle bins may be placed at the curb for pick-up no earlier than 7:00 p.m. on the evening before normal collection. Rubbish containers and recycle bins must be returned to the interior of the home before 7:00 p.m. on the pick-up day.
- ii. Rubbish remaining at the curb overnight must be enclosed in covered containers of solid plastic, metal or heavy cardboard to prevent the rubbish from being scattered, blown, or disturbed by animals or birds.
- iii. Rubbish containers, recycle bins and bags must not be permitted to remain conspicuous except on the day trash is collected. Rubbish containers and recycle bins must be kept inside the garage at all other times.
- iv. .
- v. Large items for rubbish pick-up must not be placed on the curb until the scheduled pick-up date. Pick-up of large items must be scheduled with the City of Berea in advance.

D. Seasonal Decorations

- i. Holiday and seasonal yard displays are prohibited (except as outlined below).
- ii. The following items will be permitted outside the Homeowners area for the Winter/Christmas Holiday season only: any type of seasonal statue/statuette, yard or lawn ornament, wreaths, stockings, Christmas lights, etc. may be displayed as follows:
  - 1. Nothing may be permanently attached to any part of the exterior of the home. Temporary clips are allowed. Any damage done to the exterior of the home will be the sole responsibility of the Homeowner to repair.
  - 2. Christmas lights can be installed and illuminated starting on Thanksgiving Day, and must be removed no later than 2 weeks after New Year's Day.
- iii. Items requiring attachment to buildings are strictly prohibited. (except as permitted above)

E. Bird Feeders

- i. One (1) single freestanding bird feeder per home is permitted either in a tree or on a post. The post may only be placed outside the patio in an established tree mulch area. The post must be metal and the post and feeder shall not exceed seven (7) feet in height. The feeder may not exceed eighteen (18) inches square. The post must be painted black. Bird feeders are only permitted in the rear of the home. Front and side locations are prohibited.

- ii. A Hummingbird liquid feeder or seed dispensing bird feeder in a tree is permitted as an alternate to a bird feeder.
- iii. Ground feeding of wild life such as birds, Canada Geese, ducks, squirrels, etc. Is prohibited. Foodstuff placed on the ground around the home attracts rodents and creates an unsightly appearance.

## *SALE OF A HOME*

### A. General

- i. The Board of Directors must be notified of an imminent listing of a home sale. Seller will provide the name and phone number of listing agent.
- ii. Exterior "For Sale" signs are limited to those permitted in Section 1, Article G of these rules.
- iii. A Homeowner is required to notify the Board of Directors in writing of any changes in occupancy thirty (30) days prior to such change.
- iv. The seller is responsible for providing the following information to the Buyer:
  - 1. A copy of the Declaration and By-Laws for the Trailhead Homeowners Association.
  - 2. A copy of The Trailhead Association Rules and Regulations.
  - 3. A written notice of any and all architectural changes and improvements constructed by the seller or previous sellers, which are the responsibility of the Homeowner to repair, maintain and replace.

## *MAINTENANCE FEE, LIEN PROCURES AND COST OF COLLECTION*

- A. Maintenance fees and assessments are due on the first (1<sup>st</sup>) day of the month and are considered late if not received by the tenth (10<sup>th</sup>) of the month.
- B. An administrative late charge of twenty dollars (\$20.00) per month shall be incurred for any late payment on any unpaid balance.
- C. Any cost, including attorney fees, recording costs, title reports and/or court costs incurred by the Association in the collection of delinquent maintenance fees or assessments shall be added to the amount owed by the delinquent Owner.
- D. Past due maintenance fees may cause a lien & foreclosure to be filed against the Homeowner.
- E. If any Owner fails to perform any act that he is requested to perform by the Declaration, By-Laws or the Rules and Regulations, the Association, may, but shall not be obligated to undertake such performance or cure such violation & shall charge and collect from said Homeowner the entire cost and expense, including reasonable attorney fees, of such performing or cure incurred by the Association. Any such amount shall be deemed an additional assessment upon such Homeowner and shall be due and payable when payment of the assessment next following notification of such charge becomes due and

payable, and the Association may obtain a lien for the said amount in the same manner and to the same extent as if it were lien for common expenses.

### *COMPLIANT PROCEDURE*

- A. Complaints against anyone violating the rules must be made to the Board of Directors in writing and must contain the signature of the individuals filing the complaint.
- B. The Board of Directors will, in most cases, contact the alleged violator after receipt of the complaint, and a reasonable effort will be made to gain the violator's agreement to cease or correct the violation.
- C. If reasonable efforts to gain compliance are unsuccessful, the homeowner will be subject to a sanction in accordance with the penalty provisions contained hereunder.

### *ENFORCEMENT PROCEDURE AND ASSESSMENT FOR RULE VIOLATION*

- A. The owner shall be responsible for any violation of the Declaration Bylaws, or Rules and Regulations by the owner, guests, or occupants of his/her home.
- B. Notwithstanding anything contained in these Rules, the Board shall have the right to proceed, immediately or otherwise with legal action for any violation of the Association's governing documents, as the Board in its sole discretion may determine. The entire cost of effectuating a legal remedy to impose compliance, including court costs and attorney fees, shall be added to the account of the responsible owner.
- C. All costs for extra cleaning and or repairs stemming from any violation will also be added to the responsible owner's account.
- D. In addition to any other action in accordance with the procedure outlines in Section E below, actual damages and or an enforcement assessment of up to but not exceeding \$50.00 per occurrence, or if the violation is of an ongoing nature, per day MAY be levied by the Board against an owner in violation.
- E. Prior to the imposition of an enforcement assessment for a violation, the following procedure will be followed:
  - 1. Written notice(s) will be served upon the alleged responsible owner specifying:
    - a. A reasonable date by which the owner must cure the violation to avoid the proposed charge or assessment; and
    - b. A description of the property damages or violation; and
    - c. The amount of the proposed charge and or enforcement assessment
    - d. A statement that the owner has the right to, and the procedures to request, a hearing before the Board to contest the proposed charge and or enforcement assessment.
  - 2. To request a hearing, the owner must mail or deliver a written "Request for a Hearing" notice which must be received by the Board no later than the tenth day after receiving the notice requirement in E-1 above.
    - a. If an owner timely requests a hearing, at least seven days prior to the hearing the Board shall provide the owner with a written notice that includes the date, time, and location of the hearing.

- If the owner fails to make a timely request for a hearing, the right to that hearing is waived, and the charge for damages and or enforcement assessment will be immediately imposed and
- b. At the hearing the Board and alleged responsible owner will have the right to present any evidence. This hearing will be held in executive session and proof of hearing, evidence or written notice to the owner to abate action and intent to impose an enforcement assessment shall become part of the hearing minutes. The owner will then receive notice of the Board decision and any enforcement assessment imposed within thirty (30) days of the hearing.
  - c. The Association may file a lien for an enforcement assessment and or damage charges that remains unpaid for more than ten (10) days.

#### *MISCELLANEOUS INFORMATION*

1. Any items regarding an addition, change or alteration to the Common Areas of The Association not covered in these Rules and Regulations must be presented to the Board and must receive written Board approval before implementation.
2. The Board of Directors and the members of the Homeowners Association realize that circumstances may exist where a Resident may need a temporary variance from the Rules and Regulations. If such a variance is needed, the Homeowner must submit such request to the Board of Directors in writing prior to the time in which the temporary variance is requested. The Board will approve or deny the request following review of information provided. Communication of the request and approval will be communicated by the Board to all Residents via email.

**TRAILHEAD VILLAGE  
HOMEOWNERS ASSOCIATION, INC**

**STATEMENT OF AGREEMENT**

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ I (we) \_\_\_\_\_  
hereby acknowledge receipt and acceptance of the documents of the Trailhead  
Village Homeowners Association, LLC. (Association) indicated below.

- Exhibit A: Declaration of Covenants, Conditions, Easements and  
Restrictions of Trailhead Village
- Exhibit B: Code of Regulations
- Exhibit Fii: Handbook of Rules and Regulations

My (Our) signature below expresses my (our) agreement to abide by the Rules,  
Regulations and Covenants set forth by these Documents of the Association for  
the duration of my (our) residence at Trailhead Village, in Berea, Ohio.

<b>Resident Signature:</b> _____	<b>Date:</b> _____
Printed Name: _____	
<b>Resident Signature:</b> _____	<b>Date:</b> _____
Printed Name: _____	
<b>Witness Signature:</b> _____	<b>Date:</b> _____
Printed Name: _____	